



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 230807-0185]

RIN 0648-BL31

#### Proposed Chumash Heritage National Marine Sanctuary

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Proposed rule; notification of availability of draft environmental impact statement and draft management plan; request for public comment.

**SUMMARY:** NOAA proposes to designate Chumash Heritage National Marine Sanctuary (CHNMS) in the waters along and offshore of the coast of central California to recognize the national significance of the area's ecological, historical, archaeological, and cultural resources and to manage this special place as part of the National Marine Sanctuary System. The sanctuary boundary would encompass 5,617 square miles (mi<sup>2</sup>) (4,242 nmi<sup>2</sup>) of submerged lands and marine waters from Montaña de Oro State Park in San Luis Obispo County to Naples along the Gaviota Coast in Santa Barbara County. NOAA proposes to establish the terms of designation for CHNMS and proposes regulations to implement the national marine sanctuary designation. NOAA is also publishing a draft environmental impact statement (draft EIS) and draft management plan, and soliciting public comment on the proposed rule, draft EIS, and draft management plan.

**DATES:** *Comments due:* NOAA will consider all comments received by October 25, 2023.

*Public comment meetings:* NOAA will host two in-person public comment meetings and one virtual public comment meeting on the following dates and times:

- Meeting #1: Monday, September 25, 2023; *Time:* 5 p.m.; *Location:* San Luis Obispo, CA.
- Meeting #2: Wednesday, September 27, 2023; *Time:* 5 p.m.; *Location:* Lompoc, CA.
- Meeting # 3: Thursday, October 12, 2023; *Time:* 1 p.m. Pacific Time; *Location:* Virtual.

**ADDRESSES:** *Comments:* You may submit comments on this document, identified by NOAA-NOS-2021-0080, by any of the following methods:

- Federal e-Rulemaking Portal: <https://www.regulations.gov> and search for docket NOAA-NOS-2021-0080. Follow the instructions for sending comments.
- Mail: Send any hard copy public comments by mail to Paul Michel, Regional Policy Coordinator, 99 Pacific Street, Suite 100F, Monterey, CA 93940.
- Public Meetings: Provide oral comments during a public meeting, as described under **DATES**. Webinar registration details and additional information about how to participate in these public scoping meetings is available at: <https://sanctuaries.noaa.gov/chumash-heritage/>.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](https://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will

accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Copies of the proposed rule, draft EIS, and draft management plan can be downloaded or viewed on the internet at [www.regulations.gov](http://www.regulations.gov) (search for docket # NOAA-NOS-2021-0080). Copies can also be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

*Meetings:* The meetings will be held in the following locations:

- Meeting #1: County of San Luis Obispo Board of Supervisors Hearing Room, 1055 Monterey Street, San Luis Obispo, CA 93408.
- Meeting #2: Dick DeWees Community Center, 1120 West Ocean Avenue, Lompoc, CA 93436.
- Meeting #3: Virtual, please see <https://sanctuaries.noaa.gov/chumash-heritage/> for details.

NOAA may substitute a virtual meeting platform rather than a public meeting if public safety concerns remain to prevent the spread of COVID-19. NOAA may take audio recordings of the public meetings, including the public comment portion of the meetings. Please check <https://sanctuaries.noaa.gov/chumash-heritage/> for updated information on public meetings.

**FOR FURTHER INFORMATION CONTACT:** Paul Michel, Regional Policy Coordinator, 99 Pacific Street, Suite 100F, Monterey, CA 93940, 831-647-6450, [paul.michel@noaa.gov](mailto:paul.michel@noaa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

#### *A. Background*

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due

to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to ONMS. The primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System.

NOAA proposes to designate CHNMS in the waters along and offshore of the coast of central California to recognize the national significance of the area's ecological, historical, archaeological, and cultural resources and to manage this special place as part of the National Marine Sanctuary System. The proposed sanctuary boundary would encompass 5,617 mi<sup>2</sup> (4,242 nmi<sup>2</sup>) of submerged lands and marine waters from Montaña de Oro State Park in San Luis Obispo County to Naples along the Gaviota Coast in Santa Barbara County. This boundary reflects NOAA's preferred alternative, which is described in the draft environmental impact statement (draft EIS) as Alternative 2 (Cropped Bank to Coast) and Sub-alternative 5b (Gaviota Coast Extension). NOAA has also proposed in the draft management plan a framework to provide collaborative management with the Chumash and Salinan tribes in this area for CHNMS.

The specific area proposed for national marine sanctuary designation includes the coastline of central California from Hazard Canyon Reef at the north end of Montaña de Oro State Park, south along the San Luis Obispo County coast and a portion of Santa Barbara County to approximately two miles south of Dos Pueblos Creek near the township of Naples along the Gaviota Coast. Roughly 134 miles of the mainland coast (163 miles if including the shoreline of offshore rocks and islands) are part of the area proposed for sanctuary designation. The sanctuary's proposed boundaries also include the offshore marine waters from the western end of Channel Islands National Marine Sanctuary (CINMS), northwards to within approximately 2.5 miles of the southern end of Morro Bay Wind Energy Area (WEA; as referenced in the Bureau of Ocean Energy Management (BOEM)'s Final Sale Notice for Pacific Wind Lease Sale 1, 87 FR 64093,

October 21, 2022), and then east and southeast to the point of origin at Hazard Canyon Reef. This area out to approximately 66 miles (50 nmi) from shore includes numerous offshore features including the Santa Lucia Bank, portions of its escarpment, Rodriguez Seamount, Arguello Canyon, and other offshore features and resources. Coastal watersheds drain into this area via multiple outlets, including the Santa Maria and Santa Ynez river mouths and several other coastal streams and rivers. Strong coastal winds drive seasonal upwelling which fuels the area's high biological productivity, supporting dense aggregations of marine life. Specifically, winds offshore of Point Arguello/Point Conception initiate a powerful upwelling process that nourishes other nearby productive ecosystems such as CINMS. The presence of a biogeographic transition zone around Point Conception, where temperate waters from the north meet waters from the subtropics, creates an area of nationally-significant biodiversity in sea birds, marine mammals, invertebrates, and fishes.

For more than 10,000 years, the productive and diverse ecosystems in the region have been essential to the way of life of Indigenous peoples in the region, in particular the Chumash, one of the few ocean-going bands among the First Peoples of the Pacific Coast. The Salinan tribes have also relied on marine resources along the coast in this region. Tribes' connections to the region include their traditional and ancestral homelands, customary uses of marine resources for food and cultural connections, and stewardship of resources and ecosystems within their ancestral homelands and waters. Coastal landscapes and seascapes, including viewsheds, are integral and sacred elements of Native American cultural connections to the region"). Additionally, during the last glacial maximum, the region's coastline extended beyond the present-day coast to include now-submerged areas that were likely inhabited by ancestors of California Tribes before the last sea level rise. As ocean-going Indigenous people on the California coast, the Chumash traveled to sea, to the Channel Islands, and along the coast in traditional

redwood plank canoes called “tomols.” Coastal Chumash traditionally harvested an array of marine resources such as abalone and other shellfish, *Olivella* shells, fish, kelp and other seaweeds, and marine mammals. Today, Chumash Peoples undertake ocean voyages in tomol canoes to honor their ancestors’ crossings to the offshore islands and to continue to honor ceremonial sites within their historic areas.

The marine environment of the proposed sanctuary has provided and continues to provide a special sense of place to its changing coastal communities and visitors because of its historical, archaeological, cultural, aesthetic, and biological resources. The Indigenous peoples along this coast were the first people living in present-day California to have contact with Europeans when Spanish explorers arrived on the Pacific Coast in the mid-1500s. Subsequent waves of Spanish, Mexican, English, Russian, and American explorers and settlers traveled to this region over the next 300 years. The region was shaped by development of a mission system from San Diego to San Francisco, the California gold rush in the mid-1800s, ranching for cattle and the hide/tallow trade, military training and operations, a coastal and offshore oil boom, and, more recently, coastal and offshore renewable energy development. Maritime shipping has been prominent in this portion of California, with treacherous weather and currents leading to over 200 reported ship and aircraft wrecks; at least 20 prominent shipwrecks alone have been found in the area between Point Conception and Point Sal. Two shipwrecks that lie within the proposed sanctuary – the *Yankee Blade* and the *McCulloch* – have been listed on the National Register of Historic Places; the *Montebello*, also on the National Register, lies just beyond the proposed sanctuary’s boundaries.

Coastal tourism, recreational activities, and commercial fishing are prominent components of the coastal and marine economy in this region, particularly in San Luis Obispo County. Coastal and offshore energy and military activities are more prominent in the portion of this region along the Santa Barbara County coastline. More public access is

available for the portion of the area proposed for the sanctuary in San Luis Obispo County than in Santa Barbara County, where access is more limited due to the large military base and private land holdings along this stretch of coast. Marine research is a small but growing sector of the ocean uses in this area.

*B. Need for Action*

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate national marine sanctuaries to meet the purposes and policies of the NMSA, including:

- “to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System” (16 U.S.C. 1431(b)(1));
- “to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities” (16 U.S.C. 1431(b)(2));
- “to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities” (16 U.S.C. 1431(b)(6));
- “to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas” (16 U.S.C. 1431(b)(7)); and,
- “to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques” (16 U.S.C. 1431(b)(8)).

The nationally-significant natural resources, physical features and habitats, and

the cultural and historical resources within the proposed sanctuary warrant long-term protection and management to reduce threats that would adversely affect their historical, cultural, archaeological, recreational, and educational value. For example, many threatened or endangered species, such as blue whales, snowy plovers, black abalone, white sharks, and leatherback sea turtles, rely on habitats, physical features, or prey found in the proposed sanctuary. This area also contains hundreds of known or suspected shipwrecks of historical importance, including several on the National Register of Historic Places. Moreover, this region and its abundant resources have been home to coastal, ocean-going Indigenous tribes for tens of thousands of years, and submerged village sites may exist along paleoshorelines in the submerged lands of the proposed sanctuary. Several key threats to these natural, cultural, and historical resources include: various levels of human development and activity from: offshore energy development; decommissioning and removal of coastal and offshore industrial facilities; sound, discharges and whale strikes from vessel traffic; plastics, marine debris and pollutants from coastal runoff; and most of all, acute and cumulative impacts of climate change.

Accordingly, NOAA is proposing to designate this area as a national marine sanctuary to: (1) manage and protect nationally-significant natural resources, physical features and habitats, and cultural and historical resources through a regulatory and nonregulatory framework; (2) document, characterize, monitor, study, and conserve these resources; (3) provide interpretation of their natural, cultural, historical, and educational value to the public; (4) promote public stewardship and responsible use of these resources for various purposes to the extent compatible with the sanctuary's principal goal of resource protection; (5) develop a coordinated, community-based, ecosystem-based management regime with partner Federal agencies, State and local governments, and Indigenous tribes and tribal organizations; and (6) develop and carry out an innovative



collaborative management structure to involve Indigenous communities, including federally-recognized tribes and other tribal groups and organizations, in important management programs and initiatives of the sanctuary.

Designating a new national marine sanctuary along the coast of central California would allow NOAA to complement and supplement existing Federal and State resource management programs, policies, and regulations. For instance, proposed discharge regulations to establish more comprehensive water quality protection across the geographic range proposed for sanctuary protection under NMSA would bolster existing authorities under the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*). NOAA has well-regarded and successful programs to conduct outreach, education, and communication that would recognize and promote this area's nationally-significant natural, historical, and cultural properties. NOAA could assist the region's scientific expertise and technological resources to enhance ongoing research, and provide a hub for the coordination of these activities. Through its focus on various initiatives benefiting the marine and coastal economy, NOAA's designating the area as a national marine sanctuary would enhance and facilitate public stewardship of natural, historical, and cultural resources. Lastly, designating this proposed national marine sanctuary would provide expanded conservation of key resources within the California Current Large Marine Ecosystem, and create a collaborative framework to involve Indigenous communities in region-wide management.

### *C. Designation Process*

#### *1. Notice of Intent to Designate a National Marine Sanctuary*

In July 2015, a broad community consortium led by the Northern Chumash Tribal Council submitted a nomination through the Sanctuary Nomination Process. The nomination identified opportunities for NOAA to expand upon existing local and State efforts to study, interpret, and manage the area's unique cultural and biological resources.

The nomination also highlighted the maritime history and cultural heritage of the Chumash tribal nation, who, along with other Native American tribes, have deep cultural connections to this area of central California. NOAA completed its review of the nomination and, on October 5, 2015, added the area to the inventory of successful nominations eligible for designation. All nominations submitted to NOAA can be found at: <https://www.nominate.noaa.gov/nominations>.

On November 10, 2021, NOAA began the sanctuary designation process for the proposed CHNMS by publishing a notice of intent (86 FR 62512) to prepare a draft EIS as well as other pertinent designation materials such as a draft management plan, terms of designation, and this proposed rule, as required by NMSA and the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The notice of intent also announced NOAA's intent to fulfill its responsibilities under the requirements of the National Historic Preservation Act (NHPA; 54 U.S.C. 300101 *et seq.*) and Executive Order 13175.

Following the notice of intent, NOAA conducted three virtual public meetings, hearing oral comments from 100 participants, and received thousands of written comments during an 83-day public comment period. The majority of comments supported the goals of sanctuary designation, including protecting the cultural heritage of Chumash tribal communities and protecting the coastal California ecosystem's health and resilience. Many commenters also noted the importance of managing the area to promote recreation and tourism to support the local economy, to foster education and research programs, and to establish a shared management approach with Indigenous communities. Commenters also voiced concerns about overlapping existing and potential uses of the area such as fishing and offshore energy development. Overall, comments covered a diversity of other topics including views on: the proposed boundary and name for the proposed sanctuary; alternatives to consider for the boundary and name for the proposed

sanctuary; activities that should be regulated; what non-regulatory programs the proposed sanctuary should have; and different ways to structure collaborative or co-management with Native American tribes. More detail about the scoping comments are contained in the draft EIS, section 3.11 and appendix A.

## *2. Development of Proposed Terms of Designation and Proposed Regulations*

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area proposed to be included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that would be subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made.

The purpose and need for the sanctuary provide the overarching basis for developing the proposed regulations. NOAA developed this proposed rulemaking and the proposed sanctuary terms of designation based on information received during public scoping comments, cooperating agency review, and government-to-government consultation with Tribal Nations under Executive Order 13175, as well as on information from analysis of issues in the draft EIS, interagency coordination, and internal staff analysis and expertise. Scoping comments from tribal representatives, governmental agencies, users such as the fishing industry and offshore wind energy industry, other interested organizations, and the public addressed the need for regulations and exemptions for certain activities. NOAA consulted with the Pacific Fishery Management Council as required under NMSA section 304(a)(5). NOAA also considered existing regulations for other west coast national marine sanctuaries, including Monterey Bay, Greater Farallones, Channel Islands, and Olympic Coast national marine sanctuaries, and developed terms of designation and a set of proposed regulations that are generally

consistent with other sanctuary provisions in similar resource areas. In developing the proposed regulations, NOAA evaluated resource sensitivity, industry practices, and feasibility of implementing certain regulations, to balance resource protection regulations with existing and future compatible activities that may occur in the sanctuary.

A detailed discussion of the proposed regulations is contained below in section II, subsections A through I. The proposed terms of designation are in section VI below and appendix B to the draft EIS, and would ultimately be incorporated as an appendix to the sanctuary management plan upon completion of designation.

### *3. Development of Draft Management Plan and Framework for Tribal Collaborative Management*

When designating a national marine sanctuary, NOAA also develops and presents a management plan that describes the management activities and initiatives that it proposes to conduct. The draft management plan for the proposed designation of CHNMS describes actions that NOAA will take to manage the sanctuary, summarized in 11 action plans, such as research and monitoring, education and outreach, sanctuary resource protection, and sanctuary operations, as well as practical programs to address certain issue areas, such as climate change, offshore energy, water quality, and wildlife disturbance. NOAA has developed the draft management plan for the largest boundary alternative as noted in the notice of intent and analyzed in the draft EIS as the “Initial Boundary Alternative,” so the public may evaluate the full suite of management measures for the proposed sanctuary; however, the final management plan could include fewer or reduced management actions if a boundary smaller than the Initial Boundary Alternative is ultimately designated.

In addition to engaging in government-to-government consultation with the only federally-recognized tribe in the area, the Santa Ynez Band of Chumash Indians (SYBCI), as described in section V, Classification, below, NOAA has conducted

meetings with non-federally-recognized tribes and tribal organizations along the central California coast, including the Northern Chumash Tribal Council, yak tityu tityu yak tilhini Northern Chumash Tribe, Coastal Band of the Chumash Nation, Xolon Salinan Tribe, Salinan Tribe of Monterey and San Luis Obispo Counties, Wishtoyo Chumash Foundation, and Barbareño/Ventureño Band of Mission Indians. Close, deliberate collaboration between NOAA and these tribes has been an essential element of this sanctuary designation process. NOAA intends to incorporate input from interested federally-recognized Indian tribes and all interested tribal entities, into the sanctuary designation process, as well as sanctuary management after the proposed designation. The draft management plan includes an Indigenous Cultural Engagement Action Plan that describes how sanctuary management would involve tribal perspectives and collaboration in a number of specific sanctuary management actions.

Additionally, NOAA is proposing a framework for collaborative management with Native American tribes and tribal groups for the proposed CHNMS. A detailed explanation of that proposed framework and an outline of opportunities for tribal collaboration in management of the proposed sanctuary are found in the introduction to the draft management plan. In summary, the proposed framework, built upon extensive input from SYBCI, non-federally-recognized tribes, and tribal organizations in this area of coast, envisions relying on government-to-government consultation with federally-recognized Indian tribes; an Intergovernmental Policy Council involving federally-recognized Indian tribes and the State of California; a Sanctuary Advisory Council (to be established after designation) that has one or more voting seats for federally-recognized Indian tribes and one or more voting seats to represent the knowledge, history, and culture of Indigenous communities; and an Indigenous Cultures Advisory Panel, as a working group of the Sanctuary Advisory Council, to provide advice to the Sanctuary Advisory Council, with coordination and communication with other groups as

appropriate, about cultural issues important to these coastal tribes. NOAA also envisions a role for one or more non-profit foundations to support joint projects between NOAA and federally-recognized Indian tribes and/or non-federally recognized tribes. The proposed framework was presented to SYBCI and other tribes in meetings during August 2022 and separately shared with the public in a workshop held on August 26, 2022. NOAA welcomes further comment on the proposed framework, as described in the draft management plan, through this rulemaking process.

#### *4. Draft Environmental Impact Statement*

In accordance with NEPA (42 U.S.C. 4321 *et seq.*) and the NMSA (16 U.S.C. 1434), NOAA is releasing a draft EIS for the proposed national marine sanctuary designation in conjunction with the publication of this proposed rule. The draft EIS (<https://sanctuaries.noaa.gov/chumash-heritage>) describes the purpose and need for the proposed action of designating a national marine sanctuary in the coastal and offshore waters of central California—the purpose of this proposed regulatory action—and evaluates the potential environmental consequences of the proposed designation of a national marine sanctuary; identifies a range of alternatives, including the preferred alternative; includes a comparison of the beneficial and adverse impacts among alternatives; and provides an assessment of resources and uses in the area.

The draft EIS analyzes the Initial Boundary Alternative (7,573 mi<sup>2</sup>; 5,718 nmi<sup>2</sup>; 152 miles of mainland coast), which generally represents the boundary identified in the notice of intent (86 FR 62512) but with some adjustments that are described in section 3.2 of the draft EIS, and four alternatives that are smaller than the Initial Boundary Alternative, including:

- Alternative 1, Bank to Coast, which focuses management from the Santa Lucia Bank to the coast (6,098 mi<sup>2</sup>; 4,605 nmi<sup>2</sup>; 152 miles of mainland coast);
- Alternative 2, Cropped Bank to Coast (5,553 mi<sup>2</sup>; 4,194 nmi<sup>2</sup>; 115 miles

of mainland coast), largely copies Alternative 1, however it excludes the waters from Cambria to Hazard Canyon Reef, which would be the most direct path to shore for the installation of subsea electrical transmission lines from the Morro Bay WEA;

- Alternative 3, Diablo to Gaviota Creek, also excludes more (relative to Alternative 2) northern waters that BOEM has identified for potential offshore wind development by removing the Diablo Canyon Call Area from the boundaries of the proposed sanctuary, and focuses management on the area from the Diablo Canyon Call Area and nuclear power plant south to Gaviota Creek (5,952 mi<sup>2</sup>; 4,494 nmi<sup>2</sup>; 99 miles of mainland coast), but it includes offshore waters west of the Santa Lucia Bank;

- Alternative 4, Combined Smallest, excludes both the western and northern offshore areas focusing management on the smallest area (4,476 mi<sup>2</sup>; 3,380 nmi<sup>2</sup>; 99 miles of mainland coast).

The draft EIS also analyzes two small expansion areas:

- Sub-alternative 5a, Morro Bay Estuary (2.5 mi<sup>2</sup>; 1.9 nmi<sup>2</sup>; 11 miles of mainland coast), would include the tidally-influenced portions of Morro Bay Estuary and could be added to the Initial Boundary Alternative or Alternative 1 (but would not be added to alternatives 2-4);

- Sub-alternative 5b, Gaviota Coast Extension (64 mi<sup>2</sup>; 48 nmi<sup>2</sup>; 18 miles of mainland coast), would include in the proposed sanctuary the State waters from Gaviota Creek to the township of Naples, a potential addition to any of the action alternatives.

The draft EIS also includes a “No Action Alternative” in which NOAA would not designate the area as a national marine sanctuary.

NOAA has identified as the Agency-Preferred Alternative in the draft EIS the combination of Alternative 2 and Sub-alternative 5b. This is the boundary alternative that

is reflected in this proposed rule.

Based on public comments received on the draft designation documents and NOAA's experience administering the national marine sanctuary program, pursuant to NEPA and the Administrative Procedure Act, NOAA may choose to select a new alternative in the final rule and final EIS that is within the geographic and regulatory scope of these alternatives currently considered in the draft EIS, and that is a logical outgrowth of this proposed rule. See, for example, sections 3.1.1 and 3.9.2 of the draft EIS.

The draft EIS evaluates and considers the potential impacts of implementing the proposed regulations that would be adopted as part of the preferred alternative and conducting the various management programs and initiatives described in the draft management plan.

The draft EIS focuses on eight issue areas: physical resources; biological resources; commercial fishing and aquaculture; cultural heritage and maritime heritage resources; socioeconomic, human uses, and environmental justice; offshore energy; marine transportation; and homeland security and Department of Defense (DoD) activities.

The BOEM, the Bureau of Safety and Environmental Enforcement (BSEE), the DoD and the Santa Ynez Band of Chumash Indians (SYBCI) are all cooperating agencies for the NEPA review.

#### *5. Agency-Preferred Alternative*

In accordance with NEPA (42 U.S.C. 4321 *et seq.*), NOAA is identifying as its preferred alternative the combination of Alternative 2, "Cropped Bank to Coast," and Sub-alternative 5b, "Gaviota Coast Extension." Section 5.4.9 of the draft EIS provides a map (Figure 5-1) and additional information regarding the reasons for identifying this alternative as the Agency-Preferred Alternative. NOAA has met with cooperating



agencies for this action and considered their input. NOAA has also conducted formal government-to-government consultation with the SYBCI, and has held informational meetings with other bands of the Chumash and two bands of the Salinan Tribe. NOAA developed its preferred alternative from among the suite of alternatives analyzed after considering their views as well as those of cooperating agencies, including the SYBCI, the input from outreach meetings, and after weighing the NEPA analysis.

The Agency-Preferred Alternative (i.e., preferred alternative) would provide numerous beneficial impacts on various issue areas, such as physical resources; biological resources; commercial fishing and aquaculture; cultural heritage and maritime heritage resources; socioeconomics, human uses, and environmental justice; offshore energy; and homeland security and DoD activities; largely through sanctuary regulations that would limit the scale and scope of offshore development activities and other human uses that could harm natural, historical, and cultural resources. NOAA has considered the potential adverse impacts of the preferred alternative and finds them to be not significant while also allowing an acceptable balance between resource use and conservation of sanctuary resources. This alternative would also limit adverse impacts on offshore wind development and would lessen adverse impacts on marine transportation compared to the Initial Boundary Alternative analyzed in the draft EIS.

In identifying the preferred alternative, NOAA has considered which boundary alternatives NOAA could effectively manage while allowing for compatible uses and providing increased protection and conservation for sanctuary resources, which is the proposed sanctuary's principal purpose. As such, the preferred alternative reflects NOAA's consideration of key issues, including those pertaining to subsea electrical transmission cables and the name of the proposed sanctuary. The sanctuary boundary proposed under the preferred alternative would allow NOAA to focus its management on key areas historically important to the Chumash Peoples and natural resources important

to their heritage, while appropriately managing for other resources and uses.

NOAA's identification of Alternative 2 rather than Alternative 1 as part of the preferred alternative (in addition to Sub-alternative 5b, discussed below) is based on two principal concerns about designating the area from Montaña de Oro north to Cambria as a sanctuary. The first concern, described in more detail in section 5.4.9 of the draft EIS, derives from BOEM's estimation that offshore wind development in the Morro Bay WEA could require up to 20-30 subsea electrical transmission cables and possibly floating substations in the area offshore of Morro Bay. While NOAA's proposed regulations contain a permit process that could be used to allow for the placement and continued presence of subsea electrical transmission cables within the sanctuary boundaries (for additional details please refer to part III, section D below), provided that the applicable criteria and requirements are met and that any permit conditions can be satisfied by developers, the disturbance of submerged lands and associated potential impacts on biological resources that could result from development on this scale would likely be unprecedented in a national marine sanctuary. In excluding this area, NOAA anticipates developers will be able to plan infrastructure for this area, which may minimize the potential requests to use other parts of the proposed sanctuary. Therefore, Alternative 2 would exclude some of the areas where subsea electrical transmission cables are expected to be placed from the proposed sanctuary. NOAA has evaluated the impacts of the proposed action on infrastructure in the draft EIS. NOAA additionally requests comment on any planned infrastructure in the area, as well as any potential impacts (including cost) that the sanctuary may have on this infrastructure.

The second consideration for NOAA's choice of Alternative 2 as part of the preferred alternative relates to the lack of agreement regarding the name for the portion of the proposed sanctuary from roughly Cambria to south of Morro Bay. During the scoping process and informational meetings, the Salinan bands objected to naming the sanctuary

“Chumash” in that area which they identify as being part of their ancestral homeland. Chumash bands have also considered this section of coast part of their ancestral homeland. The Xolon Salinan have expressed support for sanctuary designation of this area, provided it had a different name. Chumash bands were unwavering in their view that the entirety of the sanctuary should be named “Chumash Heritage.” Alternative 2 is responsive to Indigenous community input by delineating a geographic option that would ameliorate these concerns.

Including the Gaviota Coast Extension (Sub-alternative 5b) within the preferred alternative would provide additional protection to important coastal resources. It would include waters off three popular State beaches and parks—Gaviota, Refugio and El Capitan—and include all of Kashtayit and Naples State Marine Conservation Areas within the sanctuary. It would include additional beaches, kelp forests, and rocky and soft substrate reefs. As discussed in detail in section 4.5 of the draft EIS, that portion of the Gaviota Coast was home to numerous, large Chumash villages at the time of European first contact. Conservation of these resources is an important benefit to including this sub-alternative in the preferred alternative. Offshore structures including those necessary for existing oil and gas production in this area, such as pipelines and cables related to the Santa Ynez Unit, could be accommodated via the certification process included in the proposed regulations. Repair, replacement, or removal of the structures necessary for existing oil and gas production could be considered via an ONMS authorization process. For more details regarding the proposed permitting, authorization, and certification processes for existing oil and gas production and repair, maintenance, and removal of oil and gas structures, please refer below to section III.D.1., as well as section III.H.

## **II. Proposed Terms of Designation for Chumash Heritage National Marine**

### **Sanctuary**

Section 304(a)(4) of NMSA as amended, 16 U.S.C. 1434(a)(4), requires that the terms of designation be described at the time a new sanctuary is designated, including the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value, and the types of activities that will be subject to regulation to protect those characteristics.

The following represents the proposed terms of designation:

#### **Preamble**

Under the authority of the NMSA, approximately 5,600 mi<sup>2</sup> (4,200 nmi<sup>2</sup>) of the coast of central California's San Luis Obispo and Santa Barbara counties are hereby designated as a National Marine Sanctuary for the purpose of providing long-term protection and management of the ecological, cultural, and historical resources and the conservation, recreational, scientific, educational, and aesthetic qualities of the area.

#### **Article I: Effect of Designation**

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the ecological, cultural, and historical resources and the conservation, recreational, scientific, educational, and aesthetic qualities of Chumash Heritage National Marine Sanctuary (the "Sanctuary"). Section 1 of article IV of these terms of designation lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated. However, if an activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of article IV is amended by the same procedures by which the original Sanctuary designation was made.

## **Article II: Description of the Area**

CHNMS covers approximately 5,600 mi<sup>2</sup> (4,200 nmi<sup>2</sup>) in central California. The Sanctuary's shoreline is approximately 130 miles long along the mainland, and 163 miles long when also counting the shoreline of offshore rocks and islands. The boundary begins at the mean high water line (MHWL) at Hazard Canyon Reef in Montaña de Oro State Park, in San Luis Obispo County, and extends to the south along the MHWL to approximately two miles east of Dos Pueblos Canyon near the township of Naples along the Gaviota Coast, in Santa Barbara County. The boundary then shifts due south offshore to the State waters line, then to the west along the State waters line to approximately the outfall of Gaviota Creek, then in a southwest direction along the western end of Channel Islands National Marine Sanctuary, southward to include Rodriguez Seamount and shifting to the northwest in an arc reaching approximately 47 miles due west of Purisima Point and another arc reaching a distance approximately 54 miles due west of Morro Rock, then approximately 2.5 miles to the north, then approximately 15 miles due east, and finally to the southeast approximately 39 miles to the point of origin at MHWL at Hazard Canyon Reef. The private marina at Diablo Canyon Power Plant and Port San Luis are not included in the Sanctuary. The Sanctuary includes offshore waters and seafloor features such as Rodriguez Seamount, Arguello Canyon, and the Santa Lucia Bank. The boundary coordinates are defined by regulation (see 15 CFR 922.230 and appendix A to 15 CFR part 922, subpart V).

## **Article III: Special Characteristics of the Area**

For well over 10,000 years, First Peoples along North America have resided on the coast and in inland valleys adjacent to central California. Caves and other village sites at the nearby Channel Islands indicate occupation in this region as much as 13,000 years before present. At that time, due to glaciation at northern latitudes, the sea level was as much as 10 miles offshore from the present coastline. Paleoshorelines may exist in this

area that could provide further evidence of early human occupation. The Native Americans who live in this coastal area today, the Chumash and Salinan, can trace generations of family lineages in this region, that, when coupled with other historical accounts and archaeological data, show this coast and ocean area have supported their people, cultures, and heritage for thousands of years.

The special characteristics of the coast east of Point Conception, consisting of a south-facing coast with a channel sheltered by offshore islands, allowed Chumash to develop and make use of the plank canoe, called a “tomol,” for fishing and trade with other Chumash groups. Chumash villages north of Point Conception could not make use of the plank canoe in the rough waters and instead relied on the abundance of shellfish in this area and reed canoes. There were approximately 14 Chumash villages within the area of the sanctuary at the time of contact with Europeans, nearly 500 years ago. The largest Chumash village on the California coast at that time was “Mikiw,” located on the west bluff of Dos Pueblos Canyon. Most of the inhabited sites were located at the mouths of rivers or along the seashore where there was an abundance of food. The range of sites documented along or near the Sanctuary’s coast includes rock art, shrines, village sites, camp sites, cemeteries, organic remains, evidence of trade systems, and evidence of various forms of subsistence, including hunting, fishing, and extraction.

Serial use and development along this coastline, beginning with Indigenous peoples, then Spanish exploration and occupation, Russian fur trading, ranching and the trade for hides and tallow, discovery of gold, commercial fishing, and onshore and offshore oil and gas development have all had a hand in shaping this region’s coast and human use of resources. All of these uses have been dependent on marine transportation, and as a result over 200 ship and aircraft wrecks are recorded in this area, including several of national significance such as the *Yankee Blade*. Commercial fishing for numerous abundant fish stocks and commercial fishermen are also part of the rich

maritime heritage in the central coast region.

The natural resources of the ocean have been a principal element of most of the human occupation and exploitation of the region. Strong and persistent coastal winds drive upwelling, an oceanographic process critical to the highly productive marine ecosystem. Large kelp forests, vast sandy beaches, rocky shorelines, shallow and deep reefs, and coastal wetlands are interconnected, co-dependent biological communities prominent in this region. Important, large-scale features include the Santa Lucia Bank, a highly productive, approximately 1,000-square mile area in the heart of the Sanctuary, and thriving deep sea communities at Rodriguez Seamount and in Arguello Canyon. These productive waters complement other protected portions of the California Current by serving as critical foraging habitat for huge populations of shearwaters from New Zealand, humpback whales born offshore of Central America, leatherback sea turtles that migrate from and back to Indonesian islands, and albatross from Hawaii. More sedentary, local species depend on healthy communities in the Sanctuary, including the endangered snowy plover and black abalone, and commercially-important fish species like Dungeness crab, sablefish, spot prawn, squid, salmon, and lingcod. An estimated 33 species of marine mammals are found in the area, 18 of which can be seen on a regular basis. The Sanctuary is considered a seabird hot spot, with a higher richness of bird species than other sanctuaries offshore California. At least 400 species of fish have been documented in the area, which is also a higher richness of species than in nearby areas, likely because the Sanctuary includes warmer waters south and east of the ecological transition zone around Point Conception – Point Arguello and colder waters to the north.

The nationally significant ecological transition zone in the area around Point Conception – Point Arguello, where species more common in sub-tropical waters to the south meet with species more common in colder temperate waters to the north, is a central feature of the Sanctuary. The northern range of many warmer water species and

the southern range of many colder water species meet in the area between Point Conception and Point Arguello. Increasing ocean temperatures and other impacts from climate change intensify the need to study biogeographic shifts in this area and affirm the importance of protecting the habitats on which these species depend.

Rodriguez Seamount, 38 nmi southwest of Point Conception, formed 10–12 million years ago through volcanic activity. It rises more than a mile above the seafloor to a relatively shallow depth of around 2,000 ft. below sea level. Scientists consider it to be relatively rare in that it may once have been an island, rising to possibly 200 ft. above sea level; due to sea level rise and seafloor subsidence, the seamount is now fully submerged. From its time as an island, it has remnants of sandy beach features and from its time as a seamount, it has large coral and sponge colonies. Preliminary studies indicate a high percentage of invertebrate species as well as fish species found on Rodriguez Seamount that are not found on other nearby seamounts. Some surveys have uncovered substantial aggregations of coral colonies, with large individuals likely decades old, indicating a low level of disturbance to date. A special management zone for Rodriguez Seamount has been designated by Sanctuary regulations to allow for special protection in the water column 500 ft. above the seamount and to complement regulations adopted separately under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to protect benthic habitats.

The area contains dramatic coastlines consisting of rocky shorelines, large bluffs, and sweeping sandy beaches. Other than an approximately 10-mile stretch of urban development along the coast from Port San Luis through Oceano, most of the 134 miles of Sanctuary coastline is undeveloped due to State and county park ownership, a large stretch owned by the U.S. Government as a military installation, and private landholdings of large and small ranches or dispersed single-family dwellings. This lack of development creates a sense of wildness and highly-valued aesthetics of a natural coastal



setting worthy of national marine sanctuary designation.

## **Article IV: Scope of Regulations**

### **Section 1. Activities Subject to Regulation**

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the protection and effective management of the ecological, cultural, historical, conservation, recreational, scientific, educational, or aesthetic resources or qualities of the area:

- a. Exploring for, developing, or producing oil, gas, or minerals (e.g., clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores, or any other solid material or other physical matter of commercial value) within the Sanctuary;
- b. Discharging or depositing, from within or into the boundary of the Sanctuary, or from beyond the boundary of the Sanctuary, any material or other matter;
- c. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying, attracting, possessing, or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy, attract, or cause the loss of, a marine mammal, sea turtle, bird, historical resource, or other Sanctuary resource;
- d. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- e. Flying a motorized aircraft above the Sanctuary; f. Operating a vessel (i.e., water craft of any description) within the Sanctuary;
- g. Aquaculture or kelp harvesting within the Sanctuary;
- h. Introducing or otherwise releasing from within or into the Sanctuary an introduced species; and,
- i. Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the NMSA or

any regulation or permit issued under the NMSA.

Listing an activity here means that Secretary of Commerce can regulate the activity, after complying with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b). No term of designation issued under the authority of the NMSA may take effect in California State waters within the Sanctuary if the Governor of California certifies to the Secretary of Commerce that such term of designation is unacceptable within the review period specified in the NMSA.

## Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in section 1, are subject to immediate temporary regulation, including prohibition.

## **Article V: Effect on Leases, Permits, Licenses, and Rights**

Pursuant to section 304(c)(1) of the NMSA, no valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) The exploration for, development of, or production of oil, gas, or minerals within the Sanctuary except for existing oil and gas production of existing reservoirs under production prior to the effective date of Sanctuary designation from Platform Irene

and Platform Heritage; (2) the discharge of primary-treated sewage except for regulation, pursuant to section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction; or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency (EPA) prior to the effective date of designation. The disposal of dredged material does not include the beneficial use of dredged material. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article IV does not authorize the direct regulation of lawful fishing activities within the Sanctuary, such as setting catch quotas, establishing spatial closures for fishing, or setting fishing seasons. However, all activities listed in article IV could apply to a person engaged in the act of fishing, such as but not limited to vessel operations, wildlife disturbance, discharges, introduction of an introduced species, or disturbance of cultural or historical resources. Aquaculture and kelp harvesting are not subject to this limitation and are subject to regulation under these terms of designation. Fishing in the Sanctuary may be regulated by other Federal or State authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any fishery management regulation, permit, or license issued thereunder.

#### **Article VI: Alteration of this Designation**

The terms of designation, as defined under section 304(a)(4) of the NMSA, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, State, Tribal, regional, and local authorities and agencies, review by the appropriate congressional committees, and approval by the Secretary of Commerce, or his or her designee.

[End of terms of designation]

### **III. Summary of Proposed Regulations**

#### *A. Adding New Subpart V*

NOAA is proposing to amend 15 CFR part 922 by adding a new subpart (subpart V) that contains site-specific regulations for the proposed sanctuary. This subpart would include the proposed boundary, contain definitions of common terms used in the new subpart, identify prohibited activities and exceptions, and establish procedures for certification of existing uses and permitting otherwise prohibited activities.

#### *B. Proposed Sanctuary Boundary*

NOAA proposes to designate Chumash Heritage National Marine Sanctuary, consisting of an area of approximately 5,600 square miles (mi<sup>2</sup>) (4,200 square nautical miles (nmi<sup>2</sup>)) of coastal and ocean waters along the central coast of California and the submerged lands thereunder. The northern boundary would commence at Hazard Canyon Reef within Montaña de Oro State Park at the mean high water line (MHWL) and extend for 134 miles south along the MHWL through the remainder of San Luis Obispo County coast, excluding the private marina at Diablo Canyon Power Plant and Port San Luis (at the port's boundary for International Regulations for Preventing Collisions at Sea (COLREGS) demarcation line (33 CFR 80.1130)), and then further south and east to include the coast of western Santa Barbara County to approximately two miles east of Dos Pueblos Canyon along the Gaviota Coast near the township of Naples. The boundary then shifts due south offshore to the State waters line, to the west along the State waters line to approximately Gaviota Creek, then in a southwest direction along the western end of CINMS, southward to include Rodriguez Seamount and shifting to the northwest in an arc reaching approximately 47 miles due west of Purisima Point and another arc reaching a distance approximately 54 miles due west of Morro Rock, then approximately 2.5 miles to the north, then approximately 15 miles due east, and finally to the southeast

approximately 39 miles to the point of origin at MHWL at Hazard Canyon Reef.<sup>1</sup>

### *C. Definitions*

This proposed rule incorporates and adopts common terms defined in the national regulations at 15 CFR 922.11. In addition, NOAA proposes to include two site-specific definitions.

NOAA has proposed to define “beneficial use of dredged material” to distinguish between suitable dredge material that is discharged into the sanctuary for the purpose of protecting or restoring habitat of the sanctuary, which could be permitted, versus disposal of dredge material at a new disposal site within the sanctuary for purposes other than habitat protection or restoration, which would not be permissible. Dredged material eligible for this definition can come from a public harbor adjacent to the sanctuary, which for the Agency-Preferred Alternative would mean Port San Luis. Beneficial use of dredged material is not disposal of dredged material.

NOAA is proposing a definition for the “Rodriguez Seamount Management Zone” to define the special marine area immediately on top of, around, and adjacent to the Rodriguez Seamount. This definition is necessary because NOAA is proposing a regulation that specifically prohibits the collection or other injury of any sanctuary resource below 1,500 ft. water depth in this area from any activity other than from lawful fishing. This corresponds to the water depth about 500 ft. above the very top of the seamount. Existing fishing regulations, separately established under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), already restrict bottom trawling in much of the Rodriguez Seamount Management Zone. This special area, entirely within the boundaries of the proposed sanctuary, is bounded by geodetic lines connecting a heptagon generally centered on the top of the Rodriguez Seamount, and

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<sup>1</sup>The proposed boundary would bisect Hazard Canyon Reef at MHWL. The detailed legal boundary description is included in § 922.230 and the coordinates are located in 15 CFR part 922, subpart V, appendix A.

consists of approximately 570 mi<sup>2</sup> (430 nmi<sup>2</sup>) of ocean waters and the submerged lands thereunder. The northeast corner of this zone is located approximately 27 mi southwest of Point Conception off the coast of Santa Barbara County. Exact coordinates for the Rodriguez Seamount Management Zone boundary are provided in appendix B to subpart V.

#### *D. Prohibited and Regulated Activities*

NOAA is proposing to supplement and complement existing management of this area by proposing the following regulations in § 922.232 to protect sanctuary resources and qualities.

##### *1. Prohibition on exploring for, developing, or producing oil, gas, or minerals.*

The central California coast has hosted offshore oil and gas development for over 60 years and the area proposed for designation as a national marine sanctuary has hosted oil and gas development for nearly 40 years. There have been oil spills from platforms and pipelines in this area, and spills from onshore development and onshore pipeline transportation, all of which have caused significant environmental harm. Additional information about these spill incidents is contained in section 4.7 of the draft EIS. NOAA is proposing to prohibit exploration, development, and production of offshore oil and gas resources within the sanctuary to reduce the risk of offshore spills from oil and gas development in the area. Continued oil and gas production of existing reservoirs under production prior to the effective date of sanctuary designation from Platform Irene (as part of the Point Pedernales Unit development) and Platform Heritage (as part of the Santa Ynez Unit development), including well abandonment, and including transportation in pipelines of product to shore, would be allowed to continue after sanctuary designation until those fields are exhausted and/or the developer ends operation. However, this regulation would prevent development of new reservoirs from these existing platforms.

Constructing and operating offshore platforms and pipelines also can cause direct impacts on natural, historical, and cultural resources, particularly from disturbance to the seafloor and benthic species. Those impacts would also be prevented because this regulation would not allow new oil and gas exploration, development, or production. Any construction, repair, replacement, or removal of existing pipelines would require a ONMS authorization or other approval in order to allow disturbance to the submerged lands.

Most if not all of the platforms and pipelines within the sanctuary are likely to be decommissioned and removed within 5–10 years of sanctuary designation. The prohibition on new oil and gas development would not preclude the removal of these structures and restoration, if necessary, of any damage caused by removal, although a sanctuary permit, authorization, or other approval would be required in order to allow disturbance to the submerged lands during decommissioning, removal, and restoration activities. NOAA would be integrally involved in the planning and conduct of such decommissioning, removal, and restoration activities for structures within the sanctuary.

This prohibition would also not allow for development, including exploratory activities, of any seafloor minerals. While seafloor mining has not been proposed in this area, this regulation would ensure that the disturbance to benthic habitat and species likely to result from seafloor mining would not occur in the sanctuary.

## *2. Prohibition on discharges.*

This proposed prohibition on discharges has three main elements: prohibition on any discharge within or into the sanctuary; discharge from beyond the sanctuary boundary that subsequently enters and injures sanctuary resources; and discharges from cruise ships. Each is explained in separate paragraphs below. All three sub-elements of this prohibition are consistent with discharge prohibitions in adjacent national marine sanctuaries.

The proposed prohibition on discharges within or into the sanctuary is proposed in recognition that various substances can be discharged from vessels or from infrastructure or individuals along the shoreline that can harm sanctuary resources or quality. The proposed discharge regulations would bolster existing authorities such as the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) that provide some, yet incomplete, protection of resources from the adverse effects of discharges. Establishing a cohesive regulatory framework across the full range of the geography proposed for sanctuary protection would provide value to boaters and others using sanctuary waters. Section 4.2.1 of the draft EIS contains a detailed discussion of water quality and discharges that constitute key sources of water pollution in the area, and a brief summary of key points is provided here. While sewage is largely well-regulated from onshore facilities, and while the EPA has established a No Discharge Zone within three miles of the California coastline, NOAA's proposed prohibition would complement this regulatory framework and apply throughout the entire geographic region of the proposed sanctuary; it would also provide additional enforcement authority to protect sanctuary resources. Moreover, NOAA would commit staff time towards education and outreach to help promote compliance with this important regulation. Furthermore, the prohibition would extend throughout the sanctuary to ensure discharge of sewage from vessels does not cause acute or cumulative impacts on natural resources or water quality.

Oil discharged from vessels or from shore can cause acute toxicity in organisms, and can foul feathers of seabirds leading to illness or death. Discharging other debris from vessels, by accident or on purpose, can lead to long-term impacts on resources. A chronic accumulation of plastics in marine ecosystems, for instance, can lead to an accumulation of plastic in marine organisms including those that are eventually ingested by humans.

NOAA is proposing some exceptions for this prohibition consistent with those



exceptions at adjacent sanctuaries. For instance, NOAA is proposing to except discharge of fish, fish parts, chumming materials, or bait used in and resulting from lawful fishing activities within the sanctuary. NOAA is also proposing to except discharge of sewage waste that has been treated by a Type I or Type II marine sanitation device, as these systems provide effective treatment for sewage as to mitigate any impact their discharge can have on marine resources. Normal vessel operations can also involve washing down the deck or the anchor, which is exempted provided the wash down qualifies as “clean” per the definition at 15 CFR 922.11. There are also normal discharges from operating motorized vessels that are excepted, such as clean vessel engine cooling water, clean vessel generator water, and clean bilge water, as well as exhaust from an engine or generator. Provided that these discharges are clean, they may be discharged within or into the sanctuary. The more common threat to sanctuary resources can come from oily bilge water, soiled by oil that drips or leaks into an engine compartment. Oily bilge water may not be discharged into the sanctuary under this proposed prohibition, and would have to be disposed of at onshore pumpout stations. NOAA will coordinate with harbormasters to ensure existing onshore pumpout facilities remain operable, and, if necessary, to explore if other facilities are needed.

NOAA is proposing to except the disposal of dredged material within the proposed sanctuary at disposal sites approved by the EPA prior to designation. The proposed sanctuary boundaries do not include the two known EPA-approved dredge disposal sites used for Morro Bay dredging. NOAA is not aware of any other such sites. Nonetheless, this exception would allow an agency to demonstrate, after sanctuary designation, that a disposal site approved by the EPA existed prior to sanctuary designation.

Within the proposed sanctuary, NOAA would also consider allowing via permit the beneficial use of material removed from dredging Port San Luis, specifically to

protect or restore habitat such as a sandy beach. The beneficial use of dredged material for habitat protection or restoration purposes is different from the disposal, or discarding, of dredged material. A proposed project involving the beneficial use of dredged material from Port San Luis may be eligible for approval by NOAA if the project demonstrates a sanctuary habitat protection or restoration purpose and if the permit requirements and criteria are met.

NOAA is proposing an exception for routine discharges from U.S. Coast Guard operations. One part of the exception would allow U.S. Coast Guard vessels that lack sufficient holding tank capacity and lack a Type I or II marine sanitation device to discharge sewage and non-clean graywater beyond 3 nmi from shore. A second part of the exception would allow discharge of ammunition, pyrotechnics, and other material directly related to training from beyond 12 nmi from shore from U.S. Coast Guard vessels and aircraft conducting training activities for search and rescue and live ammunition fire in the sanctuary. NOAA recognizes that these exceptions are necessary to ensure existing U.S. Coast Guard patrols, operations, and training can be maintained in the new sanctuary. U.S. Coast Guard patrol vessels provide a tremendous benefit to NOAA by assisting with enforcement of national marine sanctuary regulations. Moreover, the U.S. Coast Guard is an essential element of marine safety to all mariners operating offshore in central California, and they also provide enforcement of other Federal laws, conduct drug smuggling interdiction activities, and protect the homeland. ONMS has developed plans with U.S. Coast Guard District 11 leadership through informal discussions and NMSA section 304(d) consultation to limit discharges into other west coast national marine sanctuaries and anticipates similar approaches could be explored for U.S. Coast Guard operations in the proposed sanctuary. Therefore, NOAA considers the proposed discharge exception for U.S. Coast Guard vessels appropriate.

Finally, NOAA is proposing an exception that would allow discharges incidental

and necessary to normal oil and gas production activities from Platforms Irene and Heritage into reservoirs already in production. These could include drill cuttings and mud to maintain well pressure and control during drilling as well as other materials necessary to force oil and gas products from one part of the reservoir into producing wells. The last step in the life of an oil and gas well is to abandon the well, with the operator pumping cement into the well to prevent release of hydrocarbons in the future; this activity would be part of the proposed exception. Use of the depleted reservoirs for injection or storage of any material not considered incidental and necessary to normal oil and gas production would not be covered by the exception yet could be considered via proposed permit processes.

Discharges from beyond the boundary of the sanctuary would also be prohibited when those discharges subsequently enter the sanctuary and harm a sanctuary resource or quality. An example of this could be a spill from an onshore oil pipeline that flows down a creek, enters the sanctuary at the MHWL, and injures seabirds, fish, algae, or the sanctuary seafloor or other habitat. Unlike a discharge directly within or into the sanctuary, for a discharge to violate this prohibition, the discharge must injure a sanctuary resource or quality. This prohibition could also be applied to a spill or other discharge that originated from the marine environment and subsequently entered the sanctuary and injured a sanctuary resource or quality. The same exceptions that are proposed for the sub-element prohibiting discharge directly within or into the sanctuary would also apply for a discharge from beyond the boundary, except for the exception for dredge disposal and the exception for discharges incidental and necessary to oil and gas production. NOAA intends that dredge disposal discharges beyond the boundary of the sanctuary need to be designed in such a manner that they do not enter the sanctuary and injure sanctuary resources or qualities.

The third sub-element of this discharge regulation would prohibit discharge from

cruise ships. Across most national marine sanctuaries, NOAA has applied consistent regulations that allow for fewer exceptions for cruise ship discharges than for other vessel discharges within or into sanctuaries because cruise ships can generate very large volumes of waste or other discharges. Even if treated, the volume of sewage and graywater, for instance, on a cruise ship of more than 2,000 passengers can reach several million gallons a day. Sewage discharge may contain bacteria or viruses that can cause disease in humans and wildlife, and can cause excessive growth and decomposition of oxygen-depleting plant life, resulting in harm or death to organisms. Section 4.2.1 of the draft EIS provides additional detail on these sorts of discharges. The only exceptions proposed for cruise ships discharging within CHNMS would be for clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clear bilge water, or anchor wash; in essence, discharges directly linked to propelling and operating the vessel itself.

### *3. Prohibition on drilling into or altering the submerged lands.*

The seabed is a large and important habitat in the ecosystem within the proposed sanctuary, and NOAA proposes to prohibit activities that would drill into, dredge, or otherwise alter or disturb the submerged lands of the sanctuary. This prohibition would include constructing, placing or abandoning any structure, material, or other matter on the submerged lands. This is a common regulatory prohibition that NOAA has applied to most national marine sanctuaries. The purpose is to prevent activities that cause harm to habitat and species on or near the seafloor, such as drilling into or dredging into the seafloor. The proposed regulation includes exceptions for certain activities including disturbance during the conduct of lawful fishing activities, kelp harvesting, or anchoring a vessel. NOAA also proposes to except from this prohibition the installation of an aid to navigation, as well as the repair, replacement, or other maintenance on existing structures, specifically docks, piers, breakwaters, or jetties. Also, NOAA proposes an

exception for maintenance dredging of the entrance channels for Port San Luis in existence at the time the sanctuary is designated. Vandenberg Space Force Base periodically conducts dredging near its coastal loading dock, with onshore disposal of the sand, but that dredging disturbance would be exempted with the general exemption for existing Department of Defense activities. NOAA has also proposed an exception to allow for drilling, maintaining, and abandoning wells incidental and necessary to normal oil and gas production activities within or into existing reservoirs in production at the time of sanctuary designation from Platforms Irene or Heritage.

In proposing these exceptions, NOAA has considered both the anticipated level of disturbance to the submerged lands and the purpose of the specified activities, most of which are related to maritime safety. The proposed exceptions are intended to further the policy of the NMSA to facilitate public and private uses of sanctuary resources to the extent compatible with the primary objective of resource protection. However, in order to conserve and protect populations of coral and sponge colonies, NOAA proposes to not apply any of these exceptions within the Rodriguez Seamount Management Zone. The only exception that would apply within the Rodriguez Seamount Management Zone is the exception for seabed disturbance conducted during lawful fishing activity as regulated under the MSA. Note, however, that most of the Rodriguez Seamount Management Zone has been designated by the Pacific Fishery Management Council as groundfish essential fish habitat under the MSA, and areas in and around the zone are currently closed to bottom trawling under regulations at 50 CFR part 660, subpart C.

Certain currently proposed or contemplated future activities could result in disturbance to the submerged lands in the area proposed for sanctuary designation. Procedures described below in the section on General Permits, Authorizations, Certifications, and Special Use Permits could be used to allow such an activity that is otherwise prohibited, provided that the applicable criteria and requirements are met and

that any permit conditions can be satisfied by developers. Examples of such activities that would be prohibited by the proposed seabed disturbance regulation unless a sanctuary general permit, ONMS authorization, or certification were issued include construction and operation of subsea electrical transmission cables from wind development in Federal waters beyond the sanctuary, or construction and operation of wind platforms in State waters near Vandenberg Space Force Base. Disturbance of submerged lands during repair and maintenance of existing structures not listed as being exempted, such as oil pipelines to shore from Platform Irene, or trans-oceanic fiber-optic telecommunications cables, would also require a permit, authorization, or certification from NOAA before proceeding.

With respect to subsea electrical transmission cables, BOEM cannot issue leases, rights of way, or easements for wind development within national marine sanctuaries per the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1337(p)(10). As discussed in the draft EIS, NOAA intends to coordinate with BOEM on potential integration of NMSA authorities and BOEM's OCSLA authorities for the purposes of specific wind development projects contemplated adjacent to and within the proposed sanctuary. Although the details of any individual permit or authorization would be project-specific and would depend upon NOAA's consideration of the permit application(s) for any particular project, NOAA believes that the most likely permitting approach for activities associated with subsea electrical transmission cables is as follows.

- To allow the site assessment and characterization activities that must be conducted prior to cable installation, NOAA could consider issuing a sanctuary general permit for research purposes under 15 CFR part 922, subpart D, and 15 CFR 922.233 of the proposed rule.
- For the installation of a subsea electric transmission cable on the outer continental shelf within the proposed sanctuary, NOAA could consider issuing an

ONMS authorization of a permit issued by the U.S. Army Corps of Engineers (USACE) under section 10 of the Rivers and Harbors Act (33 U.S.C. 403), under 15 CFR 922.36 and 922.232(e) of the proposed rule.

- For installation of cables within State waters of the proposed sanctuary, NOAA could similarly consider authorizing a lease issued by the State Lands Commission or a coastal development permit issued by the California Coastal Commission, under 15 CFR 922.36 and 922.232(e) of the proposed rule.

- To authorize the continued presence of the cable on or in the seabed within the proposed sanctuary, NOAA could then consider issuing a special use permit under section 310 of the NMSA.

- To allow any necessary maintenance and repair associated with the cable that might cause a disturbance of the submerged lands of the sanctuary, NOAA could consider several potential options. These could include relying on the initial ONMS authorization of the USACE section 10 permit and/or State permit for the cable installation (depending on the duration of that permit and whether it included future repair and maintenance), or issuing an ONMS authorization of a separate USACE and/or State permit that is issued specifically for the maintenance and repair activity.

NOAA has coordinated with USACE regarding this approach in Federal waters, and intends to continue that coordination throughout the designation process and as plans for cabling in the area are developed. Regular coordination with State agencies has occurred in the past and NOAA would conduct specific coordination meetings related to cable permitting as necessary. That said, NOAA's proposed regulations contain several permitting mechanisms (see section H of this preamble below and section 3.2.2 of the draft EIS) that would provide NOAA with flexibility in its approach to any individual permitting request.

Decommissioning and removal activities that would disturb the sanctuary seabed,

such as oil and gas platform removal or decommissioning of the outfall at the Diablo Canyon Power Plant, would require a permit, authorization, or certification from NOAA before proceeding. Further, NOAA has already commented, or could comment in the future as appropriate, to Federal, State, and local agencies leading regulatory review of these actions; also, some of these examples have been discussed with BOEM and BSEE, as cooperating agencies under NEPA for this designation, given the relevance to their authorities.

*4. Prohibition on possessing, moving, removing, or injuring or attempting to possess, move, remove, or injure a Sanctuary historical resource.*

NOAA is proposing to prohibit possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure a sanctuary historical resource, as defined at 15 CFR 922.11. This prohibition aims to reduce the risk of direct harm to sanctuary historical and cultural resources. “Moving” and “injuring” would include any changes to the position or state of historical resources, as well as covering, uncovering, moving, or taking artifacts from a shipwreck, even if the artifacts are not located directly on a shipwreck. Sanctuary historical resources include cultural and archaeological resources and artifacts. This sanctuary prohibition would apply within both State and Federal waters of the sanctuary and is necessary to ensure conservation of historical resources on the more than 200 ship and aircraft wrecks thought to exist in the sanctuary, as well as other known or unknown historical resources, such as resources that may be associated with submerged Native settlements.

*5. Prohibition on taking any marine mammal, sea turtle or bird within or above the Sanctuary.*

This prohibition is proposed to ensure conservation of important populations of marine mammals, sea turtles, and birds that are found in or above the sanctuary. The regulation would not apply should a person be authorized to take a marine mammal, sea



turtle, or bird by NOAA or the U.S. Fish and Wildlife Service pursuant to the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), or the Migratory Bird Treaty Act (MBTA). The term “take” including “taking” is defined in the national sanctuary regulations at 15 CFR 922.11.

*6. Prohibition on possessing within the Sanctuary (regardless of where taken, moved, or removed from) any marine mammal, sea turtle, or bird.*

This regulation is a companion to the preceding prohibition and is proposed to restrict a person’s ability to possess any marine mammal, sea turtle, or bird within the sanctuary, except as allowed by the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

*7. Prohibition on deserting a vessel aground, at anchor, or adrift in the Sanctuary or leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.*

Other adjacent national marine sanctuaries, similar to the proposed CHNMS, have considerable boating traffic along the coast and from local harbors. NOAA has responded to dozens of vessel sinkings, groundings, and discharges each year in national marine sanctuaries throughout the National Marine Sanctuary System, many with significant response and restoration costs and damage to sanctuary resources. Along with responding to those incidents, NOAA has adopted this regulation as a means to prevent a vessel’s sinking, grounding, or other incident, given that prevention is much less expensive than responding to incidents and can optimally prevent impacts and damage to sanctuary resources as well as to private property. NOAA proposes prohibiting deserting a vessel aground within the sanctuary for the same reasons. In the definition of the term “deserting” in the national sanctuary regulations at 15 CFR 922.11, NOAA has clarified conditions that constitute deserting a vessel. Finally, with this proposed regulation NOAA also proposes prohibiting leaving harmful matter aboard a grounded or deserted vessel in the sanctuary; the intent would be to minimize additional damage to sanctuary

resources. The sanctuary regulations at 15 CFR 922.11 also define “harmful matter.”

*8. Prohibition on attracting any white shark within the Sanctuary.*

White sharks function as a key species in coastal ecosystems in three broad areas in the world, with California and Baja California forming one of those population centers. Several different areas within the proposed sanctuary have important populations of adult and sub-adult white sharks, and may offer linkage to other white shark aggregation areas in CINMS, Monterey Bay National Marine Sanctuary (MBNMS), and Greater Farallones National Marine Sanctuary (GFNMS). Including this proposed regulation would provide similar levels of protection to these central California white shark aggregation sites within CHNMS by preventing harm or behavioral disturbance to white sharks. The proposed regulation would apply the definition of “attract” in the national sanctuary regulations at 15 CFR 922.11. The prohibition against attracting white sharks is intended to address harassment and disturbance related to human interaction from research activities directed at white sharks or shark diving programs known generally as adventure tourism, or from recreational boaters who may approach a white shark. NOAA has concluded these activities can degrade the natural environment, impacting the species as a whole, or adversely impacting individual sharks from repeated encounters with humans and boats. A similar prohibition against attracting great white sharks was promulgated for MBNMS in 1996 and GFNMS in 2008, and NOAA has not had issues at those sanctuaries with lawful fishing activities inadvertently attracting white sharks. NOAA would have the ability to issue permits for activities that involve attracting a white shark if the permit procedures and requirements are met, as described below.

*9. Prohibition on moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting or otherwise injuring a Sanctuary resource located below 1,500 ft. water depth within the Rodriguez Seamount management zone; prohibition on possessing any Sanctuary resource, the source of which is below 1,500 ft. water depth with the*

*Rodriguez Seamount Management Zone.*

NOAA is proposing a regulatory framework for Rodriguez Seamount that is similar to its approach for Davidson Seamount in MBNMS. With the CHNMS regulations, NOAA proposes to create the Rodriguez Seamount Management Zone to ensure conservation of diverse and rare resources found on the seamount, including coral and sponges and other invertebrates, or living in the water column immediately above it. The seamount has seafloor features that suggest it may have been exposed above sea level millions of years ago, and its uncommon geomorphologic and benthic habitat features could be damaged without further protection. The top of the seamount is at approximately 2,000 ft. water depth, so under the proposed regulation there would be a buffer of 500 ft. above the top of the seamount to protect organisms that migrate above the seamount diurnally.

This prohibition would not apply to lawful fishing activity that is regulated under the MSA and its implementing regulations. NOAA, through conservation actions under the MSA, has prohibited bottom trawling on and around Rodriguez Seamount since June 2006. Additional protections provided to the seamount by the proposed sanctuary regulations would protect the high biodiversity and deep-sea habitat on the seamount. Long life histories and slow growth of deep-sea communities mean that these habitats have long recovery times following injuries and adverse impacts; additional protections for resources 1,500 ft. below sea level (roughly 500 ft. above the top of the seamount) would add critical additional risk mitigation for these sensitive resources.

*10. Prohibition on introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass released during catch and release fishing activity.*

NOAA is proposing to prohibit introducing or otherwise releasing an introduced species into the sanctuary. NOAA has adopted the same introduced species regulation at

other national marine sanctuaries offshore of California to prevent the incidental or deliberate release of an introduced species into the sanctuary. Releases and subsequent spreading of introduced species have devastated marine ecosystems across the globe; most notably the alga *Sargassum horneri* has become a disruptive introduced species at nearby CINMS and has the potential to cause ecological and economic harm. This and other introduced species are potentially spread by vessels and have proliferated in the Santa Barbara Channel. Removing or otherwise eradicating introduced species once they have established local populations is extremely difficult; hence NOAA prefers to rely on prevention measures and deterring introducing such species within national marine sanctuaries. The proposed exemption for catch and release of striped bass recognizes the State of California has size limits for striped bass, an introduced but now established species harvested by recreational fishermen. Releasing a striped bass would not be a violation of this prohibition.

*11. Prohibition on interfering with, obstructing, or preventing an investigation, search, or other enforcement activity.*

NOAA proposes a regulation, similar to regulations at other local national marine sanctuaries, to prohibit interfering with various sanctuary enforcement activities. This regulation would assist in NOAA's enforcement of the sanctuary regulations and strengthen sanctuary management.

*E. Exemption for Emergencies*

The proposed prohibitions for CHNMS would not apply to any activity necessary to respond to emergencies that threaten life, property, or the environment. However, this proposed exemption for emergencies would not apply to the prohibitions on the development of oil, gas, or minerals; attracting a white shark; introducing an introduced species; or interfering with an investigation or other enforcement activity.

#### *F. Department of Defense Exemption*

NOAA has proposed a broad exemption to allow existing activities carried out or approved by the various branches of the Department of Defense as specifically identified in chapter 4.9 or appendix I to the draft EIS. NOAA has coordinated with the Department of Defense, a cooperating agency under NEPA, to include in appendix I to the draft EIS a list of the activities that occur in the area proposed for sanctuary designation.

The area overlaps with the Point Mugu sea range and is adjacent to Vandenberg Space Force Base, which conducts both military missions from the base as well as hosting commercial space launches. All launches from the base or within the proposed sanctuary that are carried out or approved by DoD would be included in this exemption. With respect to commercial and civil launches from the base and associated activities, DoD has informed NOAA that:

- DoD approval is required for these activities.
- DoD conducts NEPA reviews for these activities. Other Federal agencies, such as the Federal Aviation Administration and/or the U.S. Coast Guard, may be cooperating agencies for purposes of these NEPA reviews.
- DoD also conducts all required natural and cultural resource consultations for these activities.
- Civil partners and commercial providers conducting these activities are required to comply with DoD best management practices.

NOAA advises that based on public comments received, additional coordination with DoD, and NOAA's experience administering the national marine sanctuary system, pursuant to NEPA and the Administrative Procedure Act, the final rule and final EIS may reflect any modifications to the DoD exemption that are a logical outgrowth of the proposed rule and that do not constitute a substantial change to the proposed action relevant to environmental concerns.

New DoD activities that would not otherwise be prohibited by the CHNMS regulations would not require an amendment to the list of exempted activities. For those new DoD activities that would otherwise be prohibited by the CHNMS regulations, NOAA has proposed a process whereby the ONMS Director, upon consultation with the appropriate counterpart at the Department of Defense, can also exempt such new activities carried out by the Department of Defense.

An activity is considered to be a new activity, and not covered by the exemption for existing Department of Defense activities, if, as determined by NOAA, the activity is new or modified in any way (including change in location, frequency, duration, or technology used) from the activities described or listed in section 4.9 or appendix I, and the activity is likely to cause adverse effects on sanctuary resources or qualities that are substantially greater or different in kind than the effects of the activities described or listed in section 4.9 or appendix I.

A new activity that is not covered by the exemption for existing Department of Defense activities could be conducted if a sanctuary general permit or ONMS authorization, as applicable, were issued for the proposed activity.

In addition, NOAA commits to working with the Department of Defense to consider exempting new activities from the CHNMS regulatory prohibitions through subsequent rulemaking procedures, for instance in subsequent management plan and regulatory review processes for CHNMS. Any changes to the list of exempted Department of Defense activities could only occur after compliance with all applicable laws, such as the Administrative Procedure Act and NEPA, as necessary, and after public notice and comment, as applicable.

NOAA is willing to work with the Department of Defense to create a mechanism whereby new activities that are likely to injure sanctuary resources, and thereby also require section 304(d) consultation, could be handled in a single, consolidated review.

This proposed regulation also contains language common to regulations for other national marine sanctuaries about obligations of the Department of Defense in the event an incident results in threatened or actual destruction, loss of, or injury to a sanctuary resource or quality. NOAA recognizes that this broad exemption is necessary to ensure military readiness for the Department of Defense to conduct existing training, operations, and military readiness activities in the area proposed to be designated as a national marine sanctuary. The United States military has been able to maintain readiness and conduct training and other operations in other national marine sanctuaries based on similar broad exemptions.

#### *G. Emergency Regulations*

NOAA is not proposing any sanctuary-specific regulation to allow for development of emergency regulations to address urgent threats to sanctuary resources. Rather, the emergency regulation provision included in the regulations of general applicability, which apply to all national marine sanctuaries (see 15 CFR 922.7), would also apply to CHNMS. Emergency regulations are used when there is an imminent risk to sanctuary resources and a temporary regulation or prohibition is necessary to prevent or minimize the destruction or loss of those resources, or otherwise minimize the imminent risk of such destruction, loss, or injury.

#### *H. General Permits, Certifications, Authorizations, and Special Use Permits*

##### *1. Sanctuary general permits*

NOAA is proposing to include authority to issue sanctuary general permits to allow certain activities that would otherwise violate prohibitions in the proposed sanctuary's regulations. NOAA's proposal would not allow issuance of a sanctuary general permit for oil, gas, or mineral exploration, development, or production; introducing an introduced species; or interfering with an investigation or other enforcement activity; or as further limited in § 922.232(f) of the proposed regulations.

National marine sanctuary program-wide regulations describe, at 15 CFR 922.30, different purposes for which a sanctuary general permit could be issued, three of which would apply to this proposed sanctuary: “Research—activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality,” “Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resource or quality,” and “Management—activities that assist in managing a national marine sanctuary.”

NOAA is proposing to add to the list at § 922.30, an additional purpose specific to CHNMS for which a sanctuary general permit could be issued: “Native American cultural or ceremonial activities—activities within Chumash Heritage National Marine Sanctuary that will promote or enhance local Native American cultural or ceremonial activities; or will promote or enhance education and training related to local Native American cultural or ceremonial activities.” NOAA is proposing this general permit category to address a need identified during scoping. Specifically, NOAA received a scoping comment letter stating that indigenous peoples should be allowed to conduct the following cultural activities in the proposed sanctuary, subject to all other applicable law: collecting culturally-significant resources including bones, feathers, shells, animals, and plants; burials of cremated remains in biodegradable receptacles; survey and other work at submerged indigenous living sites, like villages or caves, including collecting artifacts like stone bowls or pestles. ONMS may be able to allow some of these activities to occur within the proposed sanctuary under existing authorities and the current general permit categories at § 922.30 (e.g., a research or education permit may be appropriate to authorize survey activities at submerged indigenous living sites); however, ONMS is proposing this additional general permit category for CHNMS to ensure that activities to promote or enhance Native American cultural or ceremonial activities may be allowed to occur within the proposed sanctuary, consistent with the purpose and need of the



proposed action. The proposed permit category would be recipient neutral; i.e., any person, as that term is defined in 15 CFR 922.11, would be able to apply for a permit under the proposed category. However, permits may only be issued for those activities that will promote or enhance local Native American cultural or ceremonial activities or education and training related to such activities. NOAA has determined that this proposed permit category would further the purposes and policies of the NMSA by facilitating uses of sanctuary resources compatible with the primary objective of resource protection, and by enhancing public awareness, understanding, appreciation, and wise and sustainable use of the historical, cultural, and archaeological resources of the proposed sanctuary.

The proposed regulations would require compliance with 15 CFR part 922, subpart D, in the national regulations for permit application processes, review procedures, amendments, and other permitting stipulations. These national permitting regulations include a list of factors NOAA considers in deciding whether or not to issue the permit, such as whether the activity must be conducted within the sanctuary, or whether the activity will be compatible with the primary objective of protection of sanctuary resources and qualities. NOAA would be able to impose specific terms and conditions through a permit as appropriate.

## *2. Certifications*

Pre-existing activities specifically authorized by a valid Federal, State, or local lease, permit, license, or rights of subsistence use or access might be occurring within the proposed CHNMS area that would otherwise be prohibited by sanctuary regulations. Therefore, NOAA proposes including § 922.234 to describe the process by which it could certify an existing valid lease, permit, license, or right of subsistence use or access within the proposed sanctuary boundaries, consistent with 16 U.S.C. 1434(c) and 15 CFR 922.10. In compliance with the NMSA, the regulations at § 922.234 would state that certification is the process by which such activities existing prior to the designation of the

sanctuary that violate sanctuary prohibitions may be allowed to continue. NOAA may, however, further regulate the exercise of such activities by applying additional terms and conditions as a condition of the certification to achieve the purposes for which the sanctuary would be designated. Requests for certifying permitted existing uses would have to be received by NOAA within 90 days of the effective date of the designation.

### *3. ONMS authorizations*

Pursuant to § 922.36 in the national regulations and § 922.232(e) in the CHNMS regulations, NOAA would have the authority to consider allowing an activity otherwise prohibited by § 922.232 if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of sanctuary designation. This “ONMS authorization authority” would apply to most of the proposed prohibitions as outlined in § 922.232(e) and as limited in § 922.232(f). However, NOAA could not issue an authorization to allow for exploration, development, or production of oil, gas, or minerals, or for interfering with an investigation or other enforcement action. In general, an ONMS authorization could not be issued to allow for an introduction of an introduced species; however, NOAA proposes a process by which an ONMS authorization for aquaculture projects raising an introduced species approved in concert with the State of California could be issued after making certain findings. NOAA has previously adopted a memorandum of agreement (MOA) with the State of California for considering aquaculture projects raising an introduced species in State waters of MBNMS and intends to update that MOA to address future aquaculture projects raising an introduced species that may be proposed within CHNMS.

### *4. Special use permits*

NOAA has the authority under the NMSA to issue special use permits (SUPs) at national marine sanctuaries, as established by section 310 of the NMSA (16 U.S.C. 1441)

and by 15 CFR 922.31. SUPs can be used to authorize specific activities in a sanctuary if such authorization is necessary to establish conditions of access to, and use of, any sanctuary resource or to promote public use and understanding of a sanctuary resource. Section 310 of the NMSA establishes four requirements for SUPs: (1) activities must be compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources; (2) SUPs shall not authorize the conduct of any activity for a period of more than five years unless otherwise renewed; (3) activities carried out under the SUP must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and (4) permittees are required to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the SUP and to agree to hold the United States harmless against such claims. The NMSA authorizes NOAA to assess and collect fees for the conduct of any activity under an SUP, including costs incurred, or expected to be incurred, in issuing the permit and the fair market value use of sanctuary resources; for instance, for use of the seabed to protect a buried cable from anchor damage. Implementing regulations at 15 CFR 922.35 provide additional detail on assessment of fees for SUPs. Like with sanctuary general permits, NOAA can place conditions on SUPs specific to the activity being permitted.

The activities that may qualify for a SUP are set forth in the *Federal Register* (78 FR 25957 (May 3, 2013); 82 FR 42298 (Sept.7, 2017)). Categories of SUPs may be changed or added to through public notice and comment, and no SUP may be issued for any category of activity unless ONMS has published a notice in the *Federal Register* that such category of activity is subject to the requirements of section 310 of the NMSA. NOAA is not proposing any new SUP category as part of the designation of CHNMS. However, SUP categories that are potentially relevant to known activities at the proposed CHNMS include the continued presence of commercial subsea cables, discharge of

cremated human remains, and discharges from fireworks displays.

### *I. Other Conforming Amendments*

The general regulations in 15 CFR part 922, subpart A, for general information and 15 CFR part 922, subpart D, for National Marine Sanctuary permitting would also have to be amended so that the regulations are accurate and up-to-date. The modified sections to conform to adding a new sanctuary are:

- Section 922.1 Purposes and applicability of the regulations
- Section 922.4 Boundaries
- Section 922.5 Allowed activities
- Section 922.6 Prohibited or otherwise regulated activities
- Section 922.30 National Marine Sanctuary general permits
- Section 922.36 National Marine Sanctuary authorizations
- Section 922.37 Appeals of permitting decisions

### **IV. Request for Comments**

NOAA requests comments on this proposed rule including the terms of designation and proposed regulations, the draft EIS including the range of alternatives, and the draft management plan for the proposed CHNMS. NOAA will publish the final EIS and final management plan following public review and comment on this proposed rule and following NOAA's consideration of substantive comments received. NOAA also requests comments on the Regulatory Flexibility Act certification and economic analysis (see section V.F). All substantive comments received, or comprehensive summary of all public comments on these documents as applicable, along with responses to comments, will be included in the final EIS.

Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comment. Comments that are not related to the proposed Chumash Heritage National Marine Sanctuary or that contain

profanity, vulgarity, threats, or other inappropriate language will not be considered.

## **V. Classification**

### *A. National Marine Sanctuaries Act*

NOAA has determined that the designation of Chumash Heritage National Marine Sanctuary (CHNMS) will not have a negative impact on the National Marine Sanctuary System and that sufficient resources exist to effectively implement sanctuary management plans and to update site characterizations. The preliminary finding for NMSA section 304(f) is available on the proposed sanctuary's website at:

<https://sanctuaries.noaa.gov/chumash-heritage/>. In addition, NOAA consulted with the Pacific Fishery Management Council (PFMC) as required in accordance with NMSA section 304(a)(5). Through this consultation, NOAA provided the PFMC with the opportunity to recommend any fishing regulations it deemed necessary to implement the proposed sanctuary designation, and participated in two public meetings with the PFMC in September 2022 and November 2022 as the Council deliberated on this issue. At its hearing on November 6, 2022, the PFMC decided not to recommend any fishing regulations to implement the proposed designation but expressed a willingness to reconsider in the future should new information about the need for fishing regulations arise. The PFMC documented this decision in a letter to ONMS West Coast Regional Office dated December 1, 2022. NOAA accepts the PFMC's response relative to the proposed designation of CHNMS.

### *B. National Environmental Policy Act*

As described in section I above, NOAA prepared a draft EIS to evaluate the impacts of this proposed action of designating a national marine sanctuary, which considered alternatives for the proposed designation of a national marine sanctuary along and offshore of the coast of central California. Copies of the draft EIS and related draft management plan are available at the address and website listed in the **ADDRESSES**

section of this proposed rule. NOAA is also soliciting public comments on the draft EIS and draft management plan. Responses to comments received on this proposed rule as well as on the draft EIS and draft management plan will be published in the final EIS and preamble to the final rule.

*C. Executive Order 12866: Regulatory Impact*

The Office of Management and Budget (OMB) has determined this proposed rule is significant action under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 190 (Oct 4, 1993), as supplemented and reaffirmed E.O. 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023). Based upon the information provided in NOAA’s accompanying Cost-Benefit Analysis (draft EIS appendix D), this proposed rule would not meet the criteria for a significant regulatory action as defined in section 3(f)(1) of E.O. 12866, as supplemented and reaffirmed by E.O. 14094. This means the estimated annual effect is less than \$200 million, and the action would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, NOAA did not prepare the full regulatory impact analysis under E.O. 12866. However, NOAA requests public comment on all the costs and benefits discussed in the accompanying Cost-Benefit Analysis.

*D. Executive Order 13132: Federalism Assessment*

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132 because NOAA supplements and complements Federal, State, and local laws under the NMSA rather than supersedes or conflicts with them. NOAA has coordinated with State partners in the development of this proposed rule. NOAA has aimed for consistent regulations throughout sanctuary waters including those within State and Federal jurisdiction.

*E. Executive Order 13175 Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13175 of November 6, 2000, Federal departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with officials of federally-recognized Tribal Nations on the development of Federal policies that have tribal implications. The Executive order identifies fundamental principles guiding agencies in formulating or implementing policies that have tribal implications, including working with federally-recognized Tribal Nations on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights, recognizing the right of Indian tribes to self-government, and supporting tribal sovereignty and self-determination. NOAA implements Executive Order 13175 through the NOAA Administrative Order 218-8 (Policy on Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations), and the NOAA Tribal Consultation Handbook. Under these policies and procedures, NOAA offers affected federally-recognized Tribal Nations government-to-government consultation at the earliest practicable time it can reasonably anticipate that a proposed policy or initiative may have Tribal implications.

NOAA identified the Santa Ynez Band of Chumash Indians (SYBCI) as the only federally-recognized Tribe in the area of the proposed sanctuary. To date, five formal consultation meetings have been conducted, on January 27, 2022, April 14, 2022, August 12, 2022, September 1, 2022, and December 19, 2022, as well as one informational meeting with NOAA leadership on April 28, 2022. In the course of this consultation, NOAA has shared relevant portions of the draft EIS and the draft management plan with the SYBCI and incorporated comments received and information exchanged in consultation to revise and update the draft EIS. NOAA's government-to-government

consultation with the SYBCI for the purpose of designating the new national marine sanctuary is still ongoing.

#### *F. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking, unless the agency certifies, pursuant to 5 U.S.C. 605, that the action will not have significant economic impact on a substantial number of small entities. The RFA requires agencies to consider, but not necessarily minimize, the effects of proposed rules on small entities. The goal of the RFA is to inform the agency and public of expected economic effects of the proposed rule and to ensure the agency considers alternatives that minimize the expected economic effects on small entities while meeting applicable goals and objectives.

Pursuant to section 605(b) of the RFA, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The purpose, context, and statutory basis for this action is described above and not repeated here. The analysis below discusses the potential effects of the proposed designation of a Chumash Heritage National Marine Sanctuary and serves as the factual basis for the certification. In summary, with this proposed rulemaking, small businesses (commercial fishing, for-hire charter operations) are not expected to experience significant impacts. The extent of costs imposed on businesses would be for those seeking a general sanctuary permit of \$172.

#### *I. Description of Small Entities to Which the Initial Boundary Alternative Would Apply*

NOAA has identified commercial and for-hire fishing vessels and the non-



consumptive recreational industry, which includes for-hire operations such as wildlife viewing, as small entities impacted by the Initial Boundary Alternative. Each relevant small business category is based on the most recent size standards published by the U.S. Small Business Administration (SBA) (2022). Size standards are based upon the average annual receipts (all revenue) or the average employment of a firm. The commercial size standard is \$25.0 million for finfish fishing (North American Industry Classification System [NAICS] code—114111), \$14.0 million for shellfish fishing (NAICS code—114112), and \$11.5 million for other marine fishing (NAICS code—114119). Water-based scenic and sightseeing transportation operations (NAICS code—487210), such as for-hire recreational fishing operations and dive/snorkeling for-hire operations, have size standards of \$14.0 million. All businesses within the industries analyzed here are small businesses, which include commercial and recreational fishing and non-consumptive recreational businesses. There are other businesses that operate within the study area; however, they are not considered small businesses (e.g., cruise ships). These large entities are discussed in the Cost-Benefit Analysis (draft EIS appendix D).

All commercial fishing and for-hire fishing vessel count data presented in this section are derived from California Department of Fish and Wildlife (CDFW) data. NOAA calculated the potential number of vessels that may be impacted by the proposed rule—as implemented in the Agency-Preferred Alternative (Alternative 2 and Gaviota Coast Extension (Sub-alternative 5b)) in the draft EIS—based on the number of vessels reporting activity, from 2016-2020, within the CDFW statistical areas that best align with the proposed sanctuary boundary. Statistical areas were included in the analysis if their center is located within the proposed boundary. In total, 53 statistical areas were included in the area analyzed—meaning if a fishing vessel landed at least one pound of commercial fish species within one of the 53 statistical areas within the study period, that vessel was considered in this analysis. Further information, including maps of the

statistical areas included may be found in Eynon, 2023. Estimates of the number of vessels that operate within the proposed sanctuary boundaries are provided below. Data for non-consumptive industries are not publicly available, so information was collected from personal communication with NOAA staff.

*i. Commercial fishing*

All commercial fishing vessels were determined to be small businesses based on the SBA size standards. On average (2016–2020), 250.6 vessels landed at least one pound of marine life within the area analyzed each year and 3,057.6 commercial fishing vessels operated within the State (CDFW, 2020a, 2021, 2020b, 2019, 2018, 2017).

*ii. For-hire recreational fishing*

For-hire recreational fishing includes both charter boats and headboats. Charter boats are fishing vessels that are typically hired to take up to six anglers on a fishing trip. In general, charter boats charge on a per-trip basis. Headboats usually operate on a schedule and may provide several trips in a single day, taking multiple fishing parties per trip and charging on a per-person basis. Headboats are usually larger and able to accommodate more anglers than a charter boat. All recreational fishing operations were determined to be small businesses. From 2016–2020, there was an annual average of 18.8 for-hire recreational fishing vessels operating within the proposed sanctuary boundaries annually and 532 vessels on average each year operating within the State (CDFW, 2020c, 2021, 2020b, 2019, 2018, 2017).

*iii. Non-consumptive recreation industry*

Businesses considered to operate in the non-consumptive recreation industry include dive and snorkel operations, rental equipment operations, wildlife viewing operations, and other businesses that either utilize or whose customers utilize, but do not take, sanctuary resources.

There are several harbors within the study area that support non-consumptive

recreation businesses. Santa Barbara, Morro Bay, and Avila Beach all have been identified to have operations that use the harbors. Across these three harbors, NOAA identified nine operations that are likely to use the proposed sanctuary waters to support their operations for whale watching and other wildlife viewing (NOAA personal communication). All of these businesses were determined to be small businesses. No operations visiting the proposed sanctuary for white shark tours were identified.

## *II. Analysis of Small Entities*

The proposed regulatory action would establish new reporting and recordkeeping requirements for small entities that apply for sanctuary general permits, certifications, or authorizations (see 15 CFR part 922 and the description in part III, section H above). As a result of this proposed action, only a minimal increase in the number of permits (approximately 5-15 permits per year) is expected, and these requirements would have a minimal impact on small entities because few operators in the area would need to apply for a permit in order to continue their activities. Minimal reporting and recordkeeping requirements are expected because lawful commercial and recreational fishing and recreational activities would be allowed to continue in the proposed sanctuary without a permit (with certain exceptions discussed below). An operator would be required to obtain a permit only if they wish to conduct activities that would be prohibited in the proposed sanctuary; for example, if a research operation or commercial activity was likely to result in damage to the seabed, a permit would be required unless an exception or exemption applies.

As discussed below, in section G., the public reporting burden for ONMS general permits is estimated to average three responses with an average of 1.5 hours per response, to include application submission, a cruise or flight log (or some other form of activity report), and a final summary report after the activity is complete. The only expected costs are related to permitting. The total cost estimate for reporting a permit is \$171.68 based

on an hourly rate of \$38.15 (see Paperwork Reduction Act OMB control number (0648–0141<sup>2</sup>)). All small and large entities would be subject to the same permitting and reporting requirements, and no unique professional skills are necessary to meet these reporting requirements. Therefore, the reporting and recordkeeping requirements resulting from this proposed rule would not have a significant impact on a substantial number of small entities.

The proposed rule does not propose to regulate commercial fishing or recreational fishing. The proposed rule is not likely to impact commercial fishermen's operations or profits within the statistical areas corresponding to the proposed sanctuary designation. Although vessels would not be permitted to discharge within the proposed sanctuary boundary, they are still permitted to discharge outside of sanctuary boundaries. As discussed in the supporting draft EIS (section 4.2.3), this regulation is unlikely to have an adverse impact on vessels, provided they plan accordingly to discharge outside of the sanctuary or use appropriate facilities near shore. Additionally, vessels are unlikely to be impacted by the seabed disturbance prohibition. If a vessel did need to engage in seabed disturbance, the small business could seek a permit from NOAA.

It is also likely that increased name recognition, marketing, and outreach of the proposed sanctuary would result in increased demand for the services offered by small businesses that utilize sanctuary resources. This is described in more detail in the economic review of the potential impacts; see appendix D of the draft EIS.

As described above, NOAA does not expect a significant reduction in profits, as the only expected costs are for permitting (\$172 per permit). No duplicative, overlapping, or conflicting Federal rules have been identified for this proposed rule. Therefore, NOAA

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<sup>2</sup>Many of the permit applicants are from academic institutions; thus, ONMS' information collection renewal uses the Bureau of Labor Statistics (BLS) Occupational Employment and Wages (May 2020) for "Life, Physical, and Social Science Occupations." For this group, BLS estimated a mean hourly wage of \$38.15 (<https://www.bls.gov/oes/current/oes190000.htm>).

has concluded that the proposed rule would not have a significant impact on a substantial number of small entities operating in the area of the proposed sanctuary due to the minimal permitting costs. Therefore, an Initial Regulatory Flexibility Analysis is not required.

#### *G. Paperwork Reduction Act*

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

NOAA has an OMB control number (0648–0141) for the collection of public information related to the processing of ONMS permits across the National Marine Sanctuary System. NOAA’s proposal to create a national marine sanctuary along the coast of central California would likely result in a minimal increase in the number of requests for ONMS general permits, special use permits, certifications, and authorizations because this action proposes to add those approval types for this proposed sanctuary. A large increase in the number of permit requests would require a change to the reporting burden certified for OMB control number 0648–0141. While not expected, if such permit requests do increase, a revision to this control number for the processing of permits would be requested.

In the most recent Information Collection Request revision and approval for national marine sanctuary permits (dated November 30, 2021), NOAA reported approximately 424 national marine sanctuary permitting actions each year, including applications for all types of ONMS permits, requests for permit amendments, and the conduct of administrative appeals. Of this amount, CHNMS is expected to add 5 to 15 permit requests per year. The public reporting burden for national marine sanctuaries

general permits is estimated to average three responses with an average of 1.5 hours per response, to include application submission, a cruise or flight log (or some other form of activity report), and a final summary report after the activity is complete. Therefore, the total annual burden hours would be expected to increase by approximately 22.5 to 67.5 hours.

Please send any comments regarding the burden estimate for this data collection requirement or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see **ADDRESSES** above). Comments can also be submitted to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Before an agency submits a collection of information to OMB for approval, the agency shall provide 60-day notice in the *Federal Register*, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### *H. National Historic Preservation Act*

Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. 306108)

requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to the undertaking. “Historic property” means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and material remains that are related to and located within such properties, including properties of traditional religious and cultural importance to an Indigenous nation or tribe or Native Hawaiian organization. 36 CFR 800.16(l).

The regulations implementing section 106 of the NHPA (36 CFR part 800) establish a process requiring Federal agencies to: (i) determine whether the undertaking is a type of activity that could affect historic properties, (ii) identify historic properties in the area of potential effects, (iii) assess potential adverse effects, and (iv) resolve adverse effects. The regulations require that Federal agencies consult with States, tribes, and other interested parties when making their effect determinations.

NOAA has determined that the designation of a national marine sanctuary and related rulemaking for sanctuary-specific regulations meet the definition of an undertaking as defined at § 800.16(y).

In fulfilling its responsibilities under section 106 of the NHPA, NOAA is seeking to identify potential consulting parties in addition to the State Historic Preservation Officer (SHPO), and will complete the identification of historic properties in the area of potential effects and the assessment of the effects of the undertaking on such properties in consultations with those identified parties. By this notice of proposed rulemaking, NOAA seeks public input, particularly in regard to the identification of historic properties within the proposed area of potential effect. Pursuant to 36 CFR 800.16(l)(1),<sup>3</sup> the term “historic

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<sup>3</sup> <https://www.ecfr.gov/current/title-36/chapter-VIII/part-800/subpart-C/section-800.16>.

property” means “any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior.” The term includes “artifacts, records, and remains that are related to and located within such properties” as well as “properties of traditional religious and cultural importance to an Indian tribe . . . that meet the National Register criteria.” If you, your organization(s), or business(es) would like to be considered a “consulting party” under section 106 please contact the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**; include contact information for the principal representative for the consultation; and describe you or your party’s interest in the proposed designation. In accordance with 36 CFR 800.3(f)(3), NOAA will consider all “consulting party” requests but has ultimate discretion in determining and inviting additional consulting parties.

#### *I. Sunken Military Craft Act*

The Sunken Military Craft Act of 2004 (SMCA; Pub. L. 108-375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note) preserves and protects from unauthorized disturbance all sunken military craft that are owned by the United States Government, as well as foreign sunken military craft that lie within United States waters, as defined in the SMCA. Thousands of U.S. sunken military craft lie in waters around the world, many accessible to looters, treasure hunters, and others who may cause damage to them. These craft, and their associated contents, represent a collection of non-renewable and significant historical resources that often serve as war graves, carry unexploded ordnance, and contain oil and other hazardous materials. By protecting sunken military craft, the SMCA helps reduce the potential for irreversible harm to these nationally important historical and cultural resources.

There are seven known U.S. Navy destroyers that ran aground and sunk near Point Honda in 1923 within the proposed CHNMS. The proposed CHNMS may also



include sunken military craft that have yet to be discovered. Sunken military craft fall under the jurisdiction of a number of Federal agencies such as the U.S. Navy and the U.S. Coast Guard. The USCGC *McCulloch* is an example of a known sunken military craft in the proposed National Marine Sanctuary that is under the jurisdiction of the U.S. Coast Guard, per the SMCA. NOAA would coordinate with the U.S. Navy, the U.S. Coast Guard and any other applicable Federal agency, or State agency if found within State waters, regarding activities directed at sunken military craft discovered within the sanctuary.

*J. Coastal Zone Management Act (CZMA)*

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a State's coastal program on potential Federal agency activities that affect any land or water use or natural resource of the coastal zone. Because the proposed sanctuary lies partially within State waters, NOAA intends to submit a copy of this proposed rule and supporting documents, including the draft EIS, to the California Coastal Commission for evaluation of Federal consistency under the CZMA. NOAA will publish the final rule and designation only after completion of the Federal consistency process under the CZMA.

*K. Executive Order 12898: Environmental Justice*

Executive Order 12898 directs Federal agencies to identify and address disproportionately high and adverse effects of their actions on human health and the environment of minority or low-income populations. The designation of national marine sanctuaries by NOAA helps to ensure the enhancement of environmental quality for all populations in the United States. The proposed sanctuary designation would not result in disproportionate negative impacts on any minority or low-income population. In addition, many of the potential impacts from designating the proposed sanctuary would result in long-term or permanent beneficial impacts by protecting sanctuary resources, which may

have a positive impact on communities by providing employment and educational opportunities, and potentially result in improved ecosystem services.

### **List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Cultural resources, Historic preservation, Marine protected areas, Marine resources, National marine sanctuaries, Recreation and recreation areas, Reporting and recordkeeping requirements, Shipwrecks.

**Nicole R. LeBoeuf,**

*Assistant Administrator for Ocean Services and Coastal Zone Management,  
National Ocean Service,  
National Oceanic and Atmospheric Administration.*

For the reasons set forth above, NOAA proposes to amend part 922, title 15 of the Code of Federal Regulations as follows:

### **PART 922 – NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS**

1. The authority citation for part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 et seq.

2. Amend § 922.1 by revising paragraph (a)(2) to read as follows:

#### **§ 922.1 Purposes and applicability of the regulations.**

(a) \* \* \*

(2) To implement the designations of the national marine sanctuaries, for which specific regulations appear in subpart F through subsequent subparts of this part, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve, manage, and thereby ensure the health, integrity, and continued availability of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological, and aesthetic resources and qualities of these areas.

\* \* \* \* \*

3. Revise § 922.4 to read as follows:

**§ 922.4 Boundaries.**

Subpart F and subsequent subparts of this part set forth the boundaries for all national marine sanctuaries.

4. Revise § 922.6 to read as follows:

**§ 922.6 Prohibited or otherwise regulated activities.**

Subpart F and subsequent subparts of this part set forth site-specific regulations applicable to the activities specified therein.

5. Amend § 922.30 by:

- a. Revising paragraph (a)(2);
- b. Removing the word “and” at the end of paragraph (b)(5);
- c. Removing the period at the end of paragraph (b)(6) and adding “; and” in its place; and
- d. Adding paragraph (b)(7).

The addition reads as follows:

**§ 922.30 National Marine Sanctuary general permits.**

(a) \* \* \*

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site-specific regulations appearing in subpart F and subsequent subparts of this part.

(b) \* \* \*

(7) Native American cultural or ceremonial activities – activities within Chumash Heritage National Marine Sanctuary that will promote or enhance local Native American cultural or ceremonial activities; or will promote or enhance education and training related to local Native American cultural or ceremonial activities.

6. Amend § 922.36 by revising paragraphs (a) and (b)(1)(ii) to read as follows:

**§ 922.36 National Marine Sanctuary authorizations.**

(a) *Authority to issue authorizations.* The Director may authorize a person to conduct an activity otherwise prohibited by subparts L through P, or subparts R through V, of this part, if such activity is specifically allowed by any valid Federal, State, or local lease, permit, license, approval, or other authorization (hereafter called “agency approval”) issued after the effective date of sanctuary designation or expansion, provided the applicant complies with the provisions of this section. Such an authorization by the Office of National Marine Sanctuaries (ONMS) is hereafter referred to as an “ONMS authorization.”

(b) \* \* \*

(1) \* \* \*

(ii) Notification must be sent to the Director, Office of National Marine Sanctuaries, to the attention of the relevant Sanctuary Superintendent(s) at the address specified in subparts L through P, or subpart R through V, of this part as appropriate.

\* \* \* \* \*

7. Amend § 922.37 by revising paragraph (a)(2) to read as follows:

**§ 922.37 Appeals of permitting decisions.**

(a) \* \* \*

(2) An applicant or a holder of a National Marine Sanctuary permit issued pursuant to § 922.30 or pursuant to site-specific regulations appearing in subparts F through V of this part;

\* \* \* \* \*

8. Add subpart V to read as follows:

**Subpart V – Chumash Heritage National Marine Sanctuary**

Sec.

922.230 Boundary.

922.231 Definitions.

922.232 Prohibited or otherwise regulated activities.

922.233 Permit procedures.

922.234 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or other rights to conduct a prohibited activity.

Appendix A to Subpart V of Part 922 — Chumash Heritage National Marine Sanctuary Boundary Description and Coordinates

Appendix B to Subpart V of Part 922 — Coordinates for Rodriguez Seamount Management Zone

**§ 922.230 Boundary.**

Chumash Heritage National Marine Sanctuary (CHNMS) consists of an area of approximately 5,617 square miles (mi<sup>2</sup>) (4,242 square nautical miles (nmi<sup>2</sup>)) of coastal and ocean waters along the central coast of California and the submerged lands thereunder. The northern boundary would commence at Hazard Canyon Reef within Montaña de Oro State Park at the mean high water line (MHWL) and extend for 134 miles south along the MHWL through the remainder of the San Luis Obispo County coast, excluding the private marina at Diablo Canyon Power Plant and Port San Luis (at the port's boundary for International Regulations for Preventing Collisions at Sea (COLREGS) demarcation line (33 CFR 80.1130)), and then further south and east to include the coast of western Santa Barbara County to approximately two miles east of Dos Pueblos Canyon along the Gaviota Coast near the township of Naples. The boundary then shifts due south offshore to the State waters line, then to the west along the State waters line to approximately 3 nmi offshore of Gaviota Creek, then in a southwest direction along the western end of Channel Islands National Marine Sanctuary, southward to include Rodriguez Seamount and shifting to the northwest in an arc reaching approximately 47 miles due west of Purisima Point and another arc reaching a distance approximately 54 miles due west of Morro Rock, then approximately 2.5 miles

to the north, then approximately 15 miles due east, and finally to the southeast approximately 39 miles to the point of origin at MHWL at Hazard Canyon Reef.

**§ 922.231 Definitions.**

In addition to the definitions found in § 922.11, the following terms are defined for purposes of this subpart:

*Beneficial use of dredged material* means the use of dredged material removed from the public harbor adjacent to the Sanctuary (Port San Luis) that is determined by the Director to be suitable as a resource for habitat protection or restoration purposes.

Beneficial use of dredged material is not disposal of dredged material.

*Rodriguez Seamount Management Zone* means the area bounded by geodetic lines connecting a heptagon generally centered on the top of the Rodriguez Seamount, and consists of approximately 570 mi<sup>2</sup> (430 nmi<sup>2</sup>) of ocean waters and the submerged lands thereunder. The northeast corner of this zone is located approximately 27 miles southwest of Point Conception off the coast of Santa Barbara County. Exact coordinates for the Rodriguez Seamount Management Zone boundary are provided in appendix B to this subpart.

**§ 922.232 Prohibited or otherwise regulated activities.**

(a) Except as specified in paragraphs (b) through (e) and paragraph (g) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing, or producing oil, gas, or minerals within the Sanctuary, except for continued oil and gas production, which includes well abandonment, of existing reservoirs under production prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) from Platform Irene and Platform Heritage.

(2)(i) Discharging or depositing from within or into the Sanctuary, other than

from a cruise ship, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activities within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) For a vessel less than 300 GRT, or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust;

(F) Beyond 3 nautical miles from shore, sewage and non-clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use by a U.S. Coast Guard vessel without sufficient holding tank capacity and without a Type I or II marine sanitation device; and beyond 12 nautical miles from shore, ammunition, pyrotechnics, or other materials directly related to training for search and rescue and live ammunition activities conducted by U.S. Coast Guard vessels and aircraft;

(G) Dredged material deposited at disposal sites within the Sanctuary authorized

by the U.S. Environmental Protection Agency (EPA), in consultation with the U.S. Army Corps of Engineers, prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]); or

(H) Discharges incidental and necessary to oil and gas production within or into existing reservoirs under production prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) from Platform Irene or Platform Heritage, including well abandonment.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except material or other matter listed in paragraphs (a)(2)(i)(A) through (F) and (a)(2)(ii) of this section.

(3) Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental and necessary to:

(i) Conduct lawful fishing activities or lawful kelp harvesting;

(ii) Anchor a vessel;

(iii) Install or maintain an authorized navigational aid;

(iv) Repair, replace, or rehabilitate an existing dock, pier, breakwater, or jetty;

(v) Conduct maintenance dredging of entrance channels for harbors in existence prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]); or,



(vi) Drill, maintain, or abandon a well necessary for purposes related to oil and gas production within or into existing reservoirs under production prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) from Platform Irene or Platform Heritage.

(vii) The exceptions listed in paragraphs (a)(3)(ii) through (vi) of this section do not apply in the Rodriguez Seamount Management Zone, the boundary of which is defined in appendix B to this subpart.

(4) Moving, removing, or injuring, or attempting to move, remove, or injure, a Sanctuary historical resource; or possessing or attempting to possess a Sanctuary historical resource, except as necessary for valid law enforcement purposes. This prohibition does not apply to, moving, removing, or injury resulting incidentally from lawful kelp harvesting or lawful fishing activities.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation promulgated under the MMPA, ESA, or MBTA.

(6) Possessing within the Sanctuary (regardless of where taken, moved, or removed from), any marine mammal, sea turtle, or bird, except as authorized by the MMPA, ESA, MBTA, by any regulation promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(7) Deserting a vessel aground, at anchor, or adrift in the Sanctuary or leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(8) Attracting any white shark within the Sanctuary.

(9)(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take,

collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 1,500 ft. below the sea surface within the Rodriguez Seamount Management Zone, as defined in appendix B to this subpart. This prohibition does not apply to lawful fishing, which is regulated pursuant to 50 CFR part 660.

(ii) Possessing any Sanctuary resource, the source of which is more than 1,500 ft. below the sea surface within the Rodriguez Seamount Management Zone, except as necessary for valid law enforcement purposes. This prohibition does not apply to possession of fish resulting from lawful fishing, which is regulated pursuant to 50 CFR part 660.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(11) Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraphs (a)(2) through (7) and (9) of this section do not apply to an activity necessary to respond to an emergency threatening life, property, or the environment.

(c)(1) The prohibitions in paragraphs (a)(2) through (7) and (9) and (10) of this section do not apply to existing activities carried out or approved by the Department of Defense that were conducted prior to the effective date of this designation ([EFFECTIVE DATE OF FINAL RULE]), as specifically identified in section 4.9 or appendix I to the final environmental impact statement for Chumash Heritage National Marine Sanctuary (for availability, see <https://sanctuaries.noaa.gov/chumash-heritage/>). New activities may be exempted from the prohibitions in paragraphs (a)(2) through (7) and (9) and (10) of

this section by the Director after consultation between the Director and the Department of Defense. All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if practicable, restore or replace the Sanctuary resource or quality.

(d) The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary general permit issued pursuant to subpart D of this part and § 922.233, or a special use permit issued pursuant to subpart D of this part.

(e) The prohibitions in paragraphs (a)(2) through (9) of this section, and paragraph (a)(10) of this section regarding any introduced species of shellfish that NOAA and the State of California have determined is non-invasive and will not cause significant adverse effects to Sanctuary resources or qualities, and that is cultivated in State waters as part of commercial shellfish aquaculture activities, do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that the Director does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals, and extensions of

authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f)(1) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary general permit under subpart D of this part and § 922.233, or an ONMS authorization or special use permit under subpart D of this part authorizing, or otherwise approve:

(i) The exploration for, development, or production of oil, gas, or minerals within the Sanctuary;

(ii) The discharge of untreated or primary-treated sewage within the Sanctuary (except by certification, pursuant to §§ 922.10 and 922.234, of valid authorizations in existence prior to the effective date of designation ([EFFECTIVE DATE OF FINAL RULE]) and issued by other authorities of competent jurisdiction); or

(iii) The disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency prior to the effective date of designation ([EFFECTIVE DATE OF FINAL RULE]). For the purposes of this subpart, the disposal of dredged material does not include the beneficial use of dredged material, as defined at § 922.231, related to dredging activity at Port San Luis.

(2) Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

(g) A person may conduct an activity prohibited by paragraphs (a)(2) through (10) of this section within the Sanctuary if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and within the sanctuary designated area and complies with § 922.10, provided that the holder of the lease, permit, license, or right of subsistence use or of access complies with the certification procedures for CHNMS as outlined in § 922.234.

**§ 922.233 Permit procedures.**

(a) A person may conduct an activity prohibited by § 922.232(a)(2) through (9), if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a sanctuary general permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the West Coast Regional Office, Office of National Marine Sanctuaries; ATTN: Superintendent, Chumash Heritage National Marine Sanctuary, 99 Pacific Street, Suite 100F, Monterey, CA 93940.

**§ 922.234 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or other rights to conduct a prohibited activity.**

(a) To obtain a certification of an activity that is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or access in existence on the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and within the sanctuary designated area, pursuant to §§ 922.10 and 922.232(g), the holder of such authorization, permit, or right shall:

(1) Notify the Director, in writing, within 90 days of the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) of the existence and location of such authorization or right and requests certification of such authorization or right; and

(2) Comply with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(b) The holder shall address any requests for certifications to: West Coast Regional Office, Office of National Marine Sanctuaries; ATTN: Superintendent, Chumash Heritage National Marine Sanctuary, 99 Pacific Street, Suite 100F, Monterey, CA 93940, or send by electronic means as defined in the instructions for the ONMS

permit application. A copy of the lease, permit, license, or right of subsistence use or of access must accompany the request.

(c) A holder requesting certification of an authorization or right described in § 922.232(g) may continue to conduct the activity without being in violation of Sanctuary prohibitions pending the Director's review of and decision regarding the holder's certification request, provided the holder is otherwise in compliance with this section.

(d) The Director may request additional information from the certification requester as the Director deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the date of the Director's request for information. Failure to provide the requested information within this time frame may be grounds for denial by the Director of the certification request.

(e) In considering whether to issue a certification, the Director may seek and consider the views of any other person or entity, within or outside the Federal Government, and may hold a public hearing as deemed appropriate by the Director.

(f) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(g) The Director may amend, suspend, or revoke any certification issued under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the certification holder and the agency that issued the underlying lease, permit,

license, or right of subsistence use or of access, and shall set forth reason(s) for the action taken.

(h) The Director may amend any certification issued under this section whenever additional information becomes available that the Director determines justifies such an amendment.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

(j) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(k) It is unlawful for any person to violate any terms and conditions in a certification issued under this section.

#### **Appendix A to Subpart V of Part 922 – Chumash Heritage National Marine Sanctuary Boundary Description and Coordinates**

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

<b>Point ID</b>	<b>Longitude</b>	<b>Latitude</b>
1	-121.81352	35.39844
2	-121.56586	35.39742
3*	-120.88251	35.28952
4*	-120.85694	35.20600
5*	-120.85605	35.20671
6*	-120.74984	35.15602
7*	-120.72509	35.17425
8*	-119.93333	34.43590
9	-119.93333	34.37859

10	-119.93822	34.38126
11	-119.94270	34.38391
12	-119.94657	34.38362
13	-119.95046	34.38354
14	-119.95292	34.38358
15	-119.95496	34.38367
16	-119.95698	34.38381
17	-119.95900	34.38401
18	-119.96257	34.38451
19	-119.96946	34.38575
20	-119.97406	34.38677
21	-119.97601	34.38729
22	-119.97815	34.38794
23	-119.98047	34.38872
24	-119.98274	34.38959
25	-119.98497	34.39053
26	-119.98715	34.39154
27	-119.98928	34.39263
28	-119.99136	34.39379
29	-119.99319	34.39491
30	-119.99514	34.39621
31	-119.99731	34.39713
32	-119.99962	34.39823
33	-120.00168	34.39930
34	-120.00386	34.40054



35	-120.00625	34.40107
36	-120.00882	34.40173
37	-120.01178	34.40261
38	-120.01409	34.40339
39	-120.01636	34.40425
40	-120.01878	34.40527
41	-120.02094	34.40628
42	-120.02320	34.40744
43	-120.02641	34.40752
44	-120.02955	34.40774
45	-120.03246	34.40806
46	-120.03569	34.40855
47	-120.03855	34.40907
48	-120.04137	34.40971
49	-120.04394	34.41040
50	-120.04667	34.41126
51	-120.04870	34.41100
52	-120.05096	34.41077
53	-120.05323	34.41062
54	-120.05528	34.41054
55	-120.05733	34.41052
56	-120.05961	34.41056
57	-120.06188	34.41068
58	-120.06392	34.41084
59	-120.06679	34.41046

60	-120.06927	34.41021
61	-120.07175	34.41004
62	-120.07424	34.40997
63	-120.07984	34.40990
64	-120.08368	34.41002
65	-120.08666	34.40991
66	-120.08964	34.40992
67	-120.09352	34.41011
68	-120.09739	34.41051
69	-120.09987	34.41088
70	-120.10255	34.41138
71	-120.10677	34.41203
72	-120.10941	34.41251
73	-120.11288	34.41331
74	-120.11729	34.41453
75	-120.11919	34.41509
76	-120.12107	34.41571
77	-120.12292	34.41639
78	-120.12474	34.41711
79	-120.12733	34.41802
80	-120.13068	34.41937
81	-120.13314	34.42030
82	-120.13678	34.42183
83	-120.14015	34.42266
84	-120.14124	34.42285

85	-120.14365	34.42227
86	-120.14631	34.42173
87	-120.14922	34.42126
88	-120.15216	34.42091
89	-120.15458	34.42039
90	-120.15725	34.41992
91	-120.16108	34.41942
92	-120.16493	34.41913
93	-120.16857	34.41904
94	-120.17221	34.41913
95	-120.17583	34.41941
96	-120.17943	34.41986
97	-120.18173	34.41968
98	-120.18378	34.41957
99	-120.18583	34.41952
100	-120.18788	34.41952
101	-120.19038	34.41961
102	-120.19288	34.41978
103	-120.19514	34.42001
104	-120.19763	34.42034
105	-120.20103	34.42014
106	-120.20468	34.42010
107	-120.21923	34.42062
108	-120.22203	34.41994
109	-120.22509	34.41933

110	-120.22818	34.41885
111	-120.23141	34.41849
112	-120.23501	34.41819
113	-120.23821	34.41806
114	-120.24012	34.41788
115	-120.24279	34.41768
116	-120.24551	34.41758
117	-120.24801	34.41758
118	-120.25140	34.41735
119	-120.26775	34.38689
120	-120.32691	34.33744
121	-120.37560	34.30480
122	-120.41671	34.27979
123	-120.53987	34.20486
124	-120.60041	34.18182
125	-120.64208	34.10208
126	-120.73023	34.07464
127	-120.85081	33.87643
128	-120.90550	33.82377
129	-121.21320	33.83184
130	-121.34958	33.85137
131	-121.40902	33.91005
132	-121.40925	34.08467
133	-121.49111	34.16932
134	-121.49220	34.21050

135	-121.49681	34.26897
136	-121.50604	34.32128
137	-121.51066	34.37975
138	-121.51681	34.41821
139	-121.52704	34.45284
140	-121.56178	34.54049
141	-121.57941	34.57950
142	-121.59010	34.59446
143	-121.62378	34.64285
144	-121.63763	34.65978
145	-121.65637	34.67837
146	-121.66652	34.69012
147	-121.68042	34.70722
148	-121.69538	34.72486
149	-121.70340	34.74143
150	-121.70500	34.76227
151	-121.69966	34.78952
152	-121.58778	35.00443
153	-121.57744	35.02331
154	-121.57606	35.03601
155	-121.58377	35.06135
156	-121.59758	35.10429
157	-121.61148	35.13903
158	-121.61469	35.14972
159	-121.65301	35.23983

160	-121.65744	35.24965
161	-121.66492	35.25607
162	-121.67721	35.26729
163	-121.70874	35.28974
164	-121.81352	35.35424
165	-121.81352	35.39844

Note 1 to appendix A: The coordinates in the table marked with an asterisk (\*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

**Appendix B to Subpart V of Part 922 – Coordinates for Rodriguez Seamount  
Management Zone within the Sanctuary**

Coordinates listed in this table are unprojected (Geographic) and based on the North American Datum of 1983.

<b>Point ID</b>	<b>Longitude</b>	<b>Latitude</b>
1	-120.75816	34.02873
2	-120.85081	33.87643
3	-120.90550	33.82377
4	-121.21320	33.83184
5	-121.25782	33.83812
6	-121.25937	34.13926
7	-120.75892	34.14264
8	-120.75816	34.02873

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